5147

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO
BEFORE THE HONORABLE JOHN E. MUNTER, JUDGE
DEPARTMENT NO. 505

LESLIE J. WHITELEY AND)
LEONARD WHITELEY,)
PLAINTIFFS,)
VS.) NO. 303184
RAYBESTOS-MANHATTAN, INC., ET)
AL.,)
DEFENDANTS.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
FRIDAY, MARCH 3, 2000
(VOLUME 36, PAGES 5147-5261)

REPORTED BY: JUDITH ANN OSSA, CSR 2310
OFFICIAL REPORTER

5148

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EXAMINATION OF PLAINTIFFS' WITNESSES

WITNESS NAME	PAGE
SUSANA ARCE	5174
DIRECT EXAMINATION	5174
CROSS-EXAMINATION	5198
REDIRECT EXAMINATION	5209
RECROSS-EXAMINATION	5218

PLAINTIFF EXHIBITS

EXHIBIT	PAGE
PLAINTIFFS' EXHIBIT 1946 MARKED FOR IDENTIFICATION	5194
PLAINTIFFS' EXHIBIT 1946 RECEIVED IN EVIDENCE	5195
PLAINTIFFS' EXHIBIT 1947 MARKED FOR IDENTIFICATION	5211

EXAMINATION OF DEFENSE WITNESSES

http://legacy.library.ucsf.edu/tid/rpr07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/hkjl0001

WITNESS NAME PAGE

READING OF DEPOSITION OF KENNETH WHITTEKER..... 5151
5155
VIDEOTAPE SHOWING OF DEPOSITION OF DEAN MOORE..... 5155
DANIEL CHER, M.D..... 5221
DIRECT EXAMINATION..... 5221
CROSS-EXAMINATION..... 5244

DEFENSE EXHIBITS

EXHIBIT PAGE

DEFENSE EXHIBIT 6294
MARKED FOR IDENTIFICATION..... 5153
DEFENSE EXHIBIT 6294-A
MARKED FOR IDENTIFICATION..... 5154
DEFENSE EXHIBITS 6164, 5139, 5191, 5175, 5087,
5163, 5185, 5293, 5256, 5785 & 5629
RECEIVED IN EVIDENCE..... 5158
DEFENSE EXHIBIT 6295
MARKED FOR IDENTIFICATION..... 5170
DEFENSE EXHIBIT 6295
RECEIVED IN EVIDENCE..... 5170
DEFENSE EXHIBIT 6296
MARKED FOR IDENTIFICATION..... 5172
DEFENSE EXHIBIT 6296
RECEIVED IN EVIDENCE..... 5172

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FRIDAY, MARCH 3, 2000 9:18 A.M.

(THE FOLLOWING PROCEEDINGS WERE HELD IN THE COURTROOM, IN THE PRESENCE OF THE JURY)

THE COURT: GOOD MORNING. IN TERMS OF THE SCHEDULE, I'M GOING TO GIVE YOU A MORE OPTIMISTIC PREDICTION, IF YOU AGREE NOT TO HOLD IT AGAINST ME IF I TURN OUT TO BE WRONG.

THE LAWYERS ARE GOING TO TRY TO COMPLETE ALL OF THE EVIDENCE TODAY. THEY THINK THAT WE CAN, IN ALL LIKELIHOOD, DO THAT.

IF WE DO THAT, IT MAY WELL BE POSSIBLE FOR THE LAWYERS AND I TO GET THE WORK DONE ON MONDAY THAT WE NEED TO GET DONE, AND IF THAT ALL HAPPENS, I'M GOING TO GIVE YOU MONDAY OFF. I'M HOPEFUL THAT WE CAN GET ALL OUR WORK DONE ON MONDAY.

AND THEN ON TUESDAY MORNING, FIRST THING, WE'LL HAVE THE INSTRUCTIONS, AND THEN THE CLOSING ARGUMENTS ON TUESDAY AND WEDNESDAY.

SO THAT'S THE SCHEDULE THAT WE ARE ALL AIMING FOR. BUT LET ME JUST TELL YOU THAT IF WE DON'T HIT THAT TARGET, I DON'T WANT YOU TO BE DISAPPOINTED. I WAS HESITATING TO EVEN TELL YOU THAT, BECAUSE I DON'T LIKE TO GIVE PEOPLE GOOD NEWS AND LATER GIVE THEM BAD NEWS.

I THINK WE ARE HOPEFULLY GOING TO BE ABLE TO MEET THAT SCHEDULE. WE'LL DO OUR BEST AND SEE IF WE ARE. I WILL TELL YOU AT THE END OF THE DAY.

WHAT'S THE NEXT ORDER OF BUSINESS?

MR. ESCHER: YOUR HONOR, AS THE NEXT ORDER OF

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BUSINESS, WE ARE GOING TO READ A VERY SHORT PASSAGE FROM THE DEPOSITION OF KENNETH WHITTEKER.

THE COURT: OKAY.

AND WHAT IS THE DATE OF THE DEPOSITION?

MR. ESCHER: THE DEPOSITION DATE, YOUR HONOR, IS OCTOBER 19, 1999.

THE COURT: OKAY. DO YOU WANT TO HAVE THIS REPORTED OR SHOULD WE HANDLE IT IN THE WAY WE HAVE HANDLED THE OTHERS. IF IT'S SHORT ENOUGH, WE CAN JUST HAVE --

MR. ESCHER: WHY DON'T WE JUST REPORT IT. THAT WOULD BE EASIER, YOUR HONOR.

THE COURT: LET'S JUST REPORT IT, SINCE IT'S SHORT. YOU NEED TO -- ALL RIGHT. I WAS GOING TO SAY YOU NEED TO SAY "QUESTION" AND "ANSWER." YOU REALLY DON'T. YOU HAVE SOME HELP IN READING THIS.

MR. ESCHER: I'D LIKE TO START ON PAGE 8, LINE 20.

"QUESTION: WOULD YOU STATE YOUR FULL NAME, PLEASE.

"ANSWER: KENNETH RAYMOND WHITTEKER.

"QUESTION: AND HOW DO YOU SPELL WHITTEKER?

"ANSWER: W-H-I-T-T-E-K-E-R.

"QUESTION: HOW OLD ARE YOU?

"ANSWER: 42. WELL, I WILL BE IN A WEEK.

"QUESTION: AND WHAT IS YOUR DATE OF BIRTH?

"ANSWER: 11-2-57.

"QUESTION: WHERE?

"ANSWER: VENTURA, CALIFORNIA.

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"QUESTION: AND ARE YOU A BROTHER TO LESLIE WHITELEY?
"ANSWER: YES, I AM.
"QUESTION: AND SHE'S NOW MARRIED, AND HER NAME IS LESLIE WHITELEY, CORRECT?
"ANSWER: CORRECT.
"QUESTION: YOU ARE APPROXIMATELY TWO YEARS OLDER THAN SHE IS?
"ANSWER: YES."
MR. ESCHER: I'D LIKE TO TURN TO PAGE 72, LINE 21.
"QUESTION: PRIOR TO HER BEING DIAGNOSED WITH LUNG CANCER, DID YOU EVER WORRY ABOUT THE PATH THAT YOUR SISTER WAS ON OF DRINKING TOO MUCH, SMOKING ALL THE TIME? DID YOU EVER THINK TO YOURSELF, 'I'M WORRIED FOR MY SISTER'?
"ANSWER: YES, I DID.
"QUESTION: DID YOU EVER COMMUNICATE THAT TO ANY ONE?
"ANSWER: I DON'T RECALL.
"QUESTION: DID YOU TALK TO YOUR MOTHER ABOUT IT.
"ANSWER: I MIGHT HAVE, BUT I CAN'T RECALL ANY SPECIFIC CONVERSATION.
"QUESTION: DID YOUR MOTHER EVER SAY TO YOU THAT SHE WAS CONCERNED ABOUT THE PATH THAT YOUR SISTER WAS ON?
"ANSWER: SHE MAY HAVE, YES.

5153
"QUESTION: WEREN'T BOTH YOU AND YOUR MOTHER

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CONCERNED THAT YOUR SISTER'S LIFESTYLE WAS BAD FOR HER HEALTH?

"ANSWER: I GUESS SO. I --"

MR. ESCHER: THAT'S IT, YOUR HONOR.

THE COURT: OKAY.

(ATTORNEYS CONFER)

MR. ESCHER: THANK YOU.

THE NEXT THING WE HAVE GOT, YOUR HONOR, IS THE VIDEOTAPE DEPOSITION OF DEAN MOORE.

THE COURT: WOULD YOU SPELL THAT NAME AGAIN, PLEASE.

MR. ESCHER: THAT'S D-E-A-N M-O-O-R-E.

THE COURT: AND THE DATE OF THE DEPO?

MR. ESCHER: NOVEMBER 9, 1999.

THE COURT: OKAY.

MR. ESCHER: I'M GOING TO HAVE THIS MARKED AS DEFENDANTS' 6294.

(ITEM MORE PARTICULARLY LISTED IN THE INDEX MARKED FOR IDENTIFICATION DEFENDANTS' EXHIBIT # 6294)

THE COURT: WHAT IS THAT YOU HAVE MARKED; THE VIDEO?

MR. ESCHER: RIGHT. WE'LL PROVIDE YOUR HONOR WITH THE APPROPRIATELY MARKED TRANSCRIPT, AND WE'LL DO THAT AS 6294-A.

(DOCUMENT MORE PARTICULARLY

LISTED IN THE INDEX MARKED

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FOR IDENTIFICATION DEFENDANTS'
EXHIBIT # 6294-A)

THE COURT: THAT HASN'T BEEN PREPARED YET?

MR. ESCHER: WE NEEDED TO MAKE -- I THINK WE'LL BE ABLE TO DO IT AFTER THE VIDEOTAPE HAS BEEN PLAYED.

THE COURT: OH, OKAY.

SO WE HAVE A STIPULATION THAT THE PLAYING OF THE VIDEO NEED NOT BE REPORTED, AND THAT IT MAY BE DEEMED THAT WHAT IS SHOWN ON THE VIDEO IS WHAT IS REFLECTED IN 6294-A, WHICH IS A WRITTEN COPY OF THE TRANSCRIPT; RIGHT?

MR. ESCHER: THAT'S RIGHT, YOUR HONOR.

THE COURT: YES?

MS. CHABER: YES.

THE COURT: AND LET ME JUST ASK YOU, BECAUSE I'M GOING TO LET JUDITH GO TO DO SOME OF HER OWN WORK, HOW LONG, APPROXIMATELY, IS THE VIDEO?

MS. CHABER: YOU ARE LOOKING --

THE COURT: I'M LOOKING AT THE WRONG PERSON.

MR. ESCHER: IT'S APPROXIMATELY AN HOUR AND A HALF, YOUR HONOR.

THE COURT: OKAY. ALL RIGHT.

I THINK, MR. ESCHER, THAT WE SHOULD TAKE A RECESS SOMETIME BETWEEN, SAY, AROUND 20 TO 11:00 OR QUARTER TO 11:00.

WHY DON'T YOU SIGNAL TO TATSUO WHEN WE ARE A MINUTE OR TWO AWAY FROM A LOGICAL BREAKING POINT. WE'LL GET JUDITH BACK IN HERE, OR CAN WE JUST GET A STIPULATION THAT

JUDITH NEED NOT RETURN? WE'LL JUST TAKE OUR RECESS WHEN WE

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DO THAT.
IS THAT ACCEPTABLE?
MS. CHABER: YES, YOUR HONOR.
MR. ESCHER: THAT'S ACCEPTABLE, YOUR HONOR.
THE COURT: WE'LL LET JUDITH GO FOR THE NEXT HOUR AND A HALF, SO AS LONG AS SHE IS AVAILABLE, IF WE NEED HER.
AND THEN WE'LL JUST HAVE THE UNDERSTANDING, MR. ESCHER, YOU WILL LET US KNOW WHEN IS A GOOD TIME FOR A RECESS AND WE'LL TURN OFF THE VIDEO.
IS THAT FAIR?
MR. ESCHER: YES, YOUR HONOR.
THE COURT: WE CAN GO OFF THE RECORD FOR THE PLAYING OF THE VIDEO.
(VIDEOTAPE SHOWN)
THE COURT: WE ARE BACK ON THE RECORD. THE VIDEO HAS BEEN PLAYED.
WHAT IS THE NEXT ORDER OF BUSINESS?
MR. ESCHER: WE ARE GOING TO READ AN ADDITIONAL PORTION OF THE DEPOSITION OF KENNETH WHITTEKER FROM OCTOBER 19, 1999.
THE COURT: OKAY.
MR. ESCHER: I DRAW YOUR ATTENTION TO PAGE 72, STARTING ON LINE 3:
"QUESTION: HAVE YOU EVER NOTICED THE WAY YOUR SISTER SMOKES CIGARETTES?
"ANSWER: I DON'T UNDERSTAND THE QUESTION.

5156
"QUESTION: HER STYLE OF SMOKING. DOES SHE

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SMOKE JUST A LITTLE BIT OF IT AND THEN PUT IT OUT, OR DOES SHE SMOKE IT ALL THE WAY DOWN TO THE FILTER? DOES SHE SEEM TO SMOKE IT INTENSELY OR SMOKE IT IN A LEISURELY WAY? THAT'S WHAT I MEAN.
"ANSWER: I NEVER REALLY NOTICED HOW SHE SMOKED CIGARETTES.
"QUESTION: BEFORE YOUR SISTER STOPPED SMOKING, WAS SHE SMOKING MOST OF THE TIMES YOU SAW HER?
"ANSWER: YES.
"QUESTION: DID YOU EVER THINK TO YOURSELF, 'I'M WORRIED THAT MY SISTER SMOKES SO MANY CIGARETTES'?
"ANSWER: NO, I DON'T THINK I DID.
"QUESTION: DO YOU EVER WORRY ABOUT YOUR SISTER'S HEALTH?
"ANSWER: I WORRY ABOUT IT NOW, YES."
MR. ESCHER: THAT'S IT, YOUR HONOR. THANK YOU.
YOUR HONOR, THE NEXT THING WE'D LIKE TO DO IS PUBLISH SOME DOCUMENTS FROM R.J. REYNOLDS TOBACCO COMPANY.
THE COURT: OKAY. YOU MAY DO SO.
MR. ESCHER: YOUR HONOR, FIRST I'D LIKE TO MOVE THE DOCUMENTS INTO EVIDENCE.
THE COURT: OKAY.
MR. ESCHER: I BELIEVE THERE'S NO OBJECTIONS.
THE COURT: ALL RIGHT.
MR. ESCHER: THAT WOULD BE DEFENDANTS' EXHIBITS 5081, 6164 -- DOES YOUR HONOR WANT THE BINDERS ON THESE?

5157

THE COURT: NO.
MR. ESCHER: 5139, 5490, 5491, 5175, 5087, 5163,

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5185, 5293, 5256, 5785 AND 5629.
THE COURT: ANY OBJECTION TO ANY OF THOSE?
MS. CHABER: YES.
THE COURT: YES?
DO YOU WANT TO JUST CHAT WITH EACH OTHER FOR A SECOND OVER THERE? I THINK THERE IS A MISUNDERSTANDING.
MS. CHABER: I THINK THERE IS.
(ATTORNEYS CONFER)
MR. ESCHER: YOUR HONOR, FOR RIGHT NOW, WE'D LIKE TO WITHDRAW THE OFFER OF TWO OF THOSE. WE'LL DEAL WITH THAT LATER.
THOSE TWO ARE 5490 AND 5081.
THE COURT: LET ME ASK THEN IF THERE IS ANY OBJECTION TO THE FOLLOWING GOING INTO EVIDENCE, AND IF NOT, I WILL RECEIVE THEM.
HERE IS THE LIST: 6164, 5139, 5191, 5175, 5087, 5163, 5185, 5293, 5256, 5785 AND 5629.
ANY OBJECTION TO ANY OF THOSE?
MS. CHABER: YOU DIDN'T SAY 5081; RIGHT?
THE COURT: I DID NOT SAY 5081 AND 5490, BUT OTHER THAN THAT, I REPEATED THE LIST.
MS. CHABER: NO OBJECTION.
THE COURT: THEN ALL OF THEM THAT WERE ON THAT LIST ARE RECEIVED, WITH THE UNDERSTANDING THAT 5081 AND 5490 ARE NOT BEING OFFERED AT THIS TIME.
MR. ESCHER: THAT'S RIGHT, YOUR HONOR.

5158

(DOCUMENTS MORE PARTICULARLY LISTED IN THE INDEX RECEIVED

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IN EVIDENCE AS DEFENDANTS'
EXHIBIT #S 6164, 5139, 5191,
5175, 5087, 5163, 5185, 5293,
5256, 5785 AND 5629)

MR. ESCHER: LET ME SET UP FOR A MOMENT.

THE COURT: I NEED TO TELL YOU, I'M GOING TO HAVE TO BREAK FOR LUNCH TODAY ABOUT 10 MINUTES TO 12.

MR. ESCHER: COULD WE HAVE THE LIGHTS.

THE FIRST DOCUMENT IS DEFENDANTS' EXHIBIT 6146.

"FOR RELEASE TO A.M. NEWSPAPERS WEDNESDAY, MAY 10, 1967.

"R.J. REYNOLDS TOBACCO COMPANY TODAY ANNOUNCED THAT IT HAS TAKEN STEPS TO DISCONTINUE ADVERTISING ITS CIGARETTE BRANDS ON THE BEVERLY HILLBILLIES TELEVISION PROGRAM.

"THE COMPANY STATED ITS ACTION WAS TAKEN TO COMPLY WITH THE VOLUNTARY CIGARETTE ADVERTISING CODE.

"THE BEVERLY HILLBILLIES, ACCORDING TO RECENT AUDIENCE COMPOSITION SURVEYS, NOW HAS OVER 45 PERCENT OF ITS TOTAL AUDIENCE UNDER 21 YEARS OF AGE.

"A REYNOLDS SPOKESMAN SAID THAT THE COMPANY WOULD COMPLY WITH A REGULATION UNDER THE CIGARETTE ADVERTISING CODE WHICH PROVIDES THAT A CODE MEMBER SHOULD NOT ADVERTISE CIGARETTES ON A

TELEVISION SERIES WITH A VIEWING AUDIENCE THAT EXCEEDS 45 PERCENT OF PERSONS UNDER 21 YEARS OF

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AGE."
THE COURT: WHAT NUMBER DID YOU JUST SAY THAT WAS?
MR. ESCHER: 6164, YOUR HONOR.
THE COURT: I THINK YOU SAID 6146.
MR. ESCHER: IT'S 6164.
THE COURT: OKAY.
MR. ESCHER: THE NEXT DOCUMENT IS DEFENDANTS' EXHIBIT 5139. IT'S ENTITLED:
"TOBACCO FLAVORING FOR SMOKING PRODUCTS" BY JOHN LEFFINGWELL, HARVEY YOUNG, EDWARD BERNASEK, COPYRIGHTED R.J. REYNOLDS TOBACCO COMPANY, 1972, WINSTON-SALEM, NORTH CAROLINA.
"CONSUMER TOBACCO PRODUCTS COMMONLY MANUFACTURED THROUGHOUT THE WORLD ARE CIGARETTES, PIPE TOBACCOS, CIGARS AND CIGARILLOS AS WELL AS OTHER FORMS OF TOBACCO SUCH AS SNUFF AND CHEWING TOBACCOS. THIS MONOGRAPH WILL BE LIMITED TO A SHORT DISCUSSION OF THE MAJOR TYPES OF TOBACCOS AND PRIMARILY TO THE VAST AMOUNT OF DATA ACCUMULATED OVER MANY YEARS ON FLAVORING COMPONENTS USEFUL IN SMOKING PRODUCTS.
"A SMOKING FLAVOR OF A TOBACCO PRODUCT IS DUE PRIMARILY TO THE TYPES, GRADES AND BLENDS OF TOBACCO EMPLOYED. THE FLAVOR SPECIALIST HAS THE TASK OF IMPROVING, MELLOWING AND MODIFYING THE

5160

TOBACCO AROMA AND TASTE TO FIT THE DESIRES OF THE CONSUMING PUBLIC. JUST AS THE BLENDS AND TYPES OF TOBACCOS USED ARE DETERMINING FACTORS IN THE

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DESIGN OF A PRODUCT, THE FLAVORINGS WHICH ARE ADDED GREATLY INFLUENCE THE QUALITY AND ACCEPTABILITY OF THE FINISHED PRODUCT."

"THE MAJOR TYPES OF TOBACCOS COMMONLY USED IN SMOKING PRODUCTS ARE BURLEY, FLUE-CURED (VIRGINIA BRIGHT LEAF), ORIENTAL (TURKISH, GREEK, YUGOSLAV), CIGARS TYPES AND, TO A LESSER DEGREE, MARYLAND."

"BLENDS OF VARIOUS TOBACCOS ARE COMMONLY USED IN SMOKING PRODUCTS TO INSURE CONSISTENCY IN THE FINAL PRODUCT MIXTURE. THE BLENDING, CASING AND FLAVORING OF TOBACCOS ARE NECESSARY TO COMPENSATE FOR VARIATIONS IN THE CHEMICAL COMPOSITION OF THE TOBACCOS USED (I.E., THE RELATIVE PRESENCE OR DEFICIENCIES OF CERTAIN CLASSES OF CONSTITUENTS SUCH AS SUGARS, ACIDS, VOLATILE OILS AND ALKALOIDS). USING CERTAIN CHEMICAL ANALYSES AND FLAVOR EVALUATIONS OF GRADES AND CROP YEARS, BLENDS FOR CIGARETTES (OR OTHER SMOKING PRODUCTS) ARE MADE BASED ON THE TASTE PREFERENCE OF THE INTENDED CUSTOMER AS WELL AS COST AND AVAILABILITY OF THE TOBACCOS."

"IN SUMMARY, IT SHOULD BE APPARENT THAT THE SELECTION AND BLENDING OF TOBACCOS ARE VERY COMPLEX. THE MANUFACTURER MUST POSSESS A

5161

COMPLETE UNDERSTANDING OF THE MANY TYPES OF TOBACCOS AND THE CHEMICAL AND FLAVOR VARIATIONS WITHIN TYPES DUE TO STALK POSITION, CLIMATIC AND

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GEOGRAPHIC VARIATIONS, CHANGING AGRONOMIC PRACTICES AS WELL AS CURING AND PROCESSING PROCEDURES EMPLOYED SUBSEQUENT TO HARVESTING OF THE TOBACCO. THIS KNOWLEDGE, COUPLED WITH CHANGING WORLD TRADE CONDITIONS, AVAILABILITY OF THE TYPES AND GRADES DESIRED AND ECONOMICS GIVES RISE TO THE FINAL COMBINATION WHICH MAKES UP EACH TOBACCO BLEND."

"THE ROLE OF CASINGS IN FLAVORING OF SMOKING PRODUCTS.

"CASINGS OR SAUCE MATERIALS ARE ADDED TO TOBACCOS TO ENHANCE THEIR QUALITY BY BALANCING THE CHEMICAL COMPOSITION AND TO DEVELOP CERTAIN DESIRED FLAVOR CHARACTERISTICS. FOR EXAMPLE, IF A TOBACCO OR TOBACCO BLEND IS LOW IN SUGAR, (E.G., IN THE CASE OF AIR-CURED TOBACCOS), THE SMOKE WILL OFTEN BE ALKALINE AND GIVE A HARSH AND IRRITATING EFFECT. SUGAR IS ADDED TO RESTORE A

CHEMICAL EQUILIBRIUM BETWEEN THE ACID FORMING AND BASE FORMING CONSTITUENTS OF THE SMOKE. THIS BALANCE OF SUGARS, ACIDS AND ALKALINE CONSTITUENTS VARIES BY TYPES OF TOBACCO AND MUST BE CAREFULLY ADJUSTED BY THE TOBACCO MANUFACTURER TO PRODUCE A MELLOW, FULL-BODIED SMOKE."

THE COURT: IS THAT THE END OF THE DOCUMENT?

5162

MR. ESCHER: YES, IT IS, YOUR HONOR.

THE COURT: I'M GOING RECESS FOR LUNCH, RATHER THAN START ANOTHER DOCUMENT AT THIS TIME.

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JURORS, I NEED TO GIVE YOU A LITTLE BIT OF EXTRA TIME FOR LUNCH. WE ARE STILL OKAY ON TIME, COUNSEL? WE'LL FINISH BY THE END OF THE DAY?

MR. HARDY: YES.

THE COURT: JURORS, PLEASE CONTINUE TO FOLLOW THE ADMONITION OVER THE NOON HOUR. WE'LL SEE YOU BACK AT 1:30.

(LUNCH RECESS TAKEN AT 11:42 A.M.)

5163

AFTERNOON SESSION 2:02 P.M.

MARCH 3, 2000

THE COURT: GOOD AFTERNOON, EVERYBODY.

ONE OF THE REASONS THAT YOU WAITED, WE ARE

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WORKING ON THE SCHEDULE TO TRY TO GET ALL THIS STUFF ACCOMPLISHED IN A LOGICAL WAY THAT'S MOST CONVENIENT FOR YOU.

SO EVEN THOUGH YOU WIND UP WAITING A LITTLE BIT, WE ARE WORKING TO MAKE THIS EFFICIENT FOR YOU.

MR. HARDY: YOUR HONOR, WOULD THIS BE A GOOD TIME FOR THE COURT TO READ THE STATEMENT WE TALKED ABOUT?

THE COURT: I UNDERSTAND THAT THE PARTIES ARE JOINTLY REQUESTING THE COURT TO READ THIS STATEMENT TO THE JURY.

I'M GOING TO ASK YOU TO CONFIRM THAT, IT IS THE CASE.

MR. HARDY: YES.

THE COURT: IS ANYBODY LISTENING TO ME?

MR. ESCHER: YES, YOUR HONOR.

MS. CHABER: YES, YOUR HONOR.

THE COURT: OKAY: HERE'S THE STATEMENT.

"CERTAIN EXPERTS CALLED BY THE PLAINTIFFS OFFERED OPINIONS THAT REFERRED TO AN INTERROGATORY ANSWER GIVEN BY PLAINTIFF LESLIE WHITELEY RELATING TO HER DRUG USE. THAT INTERROGATORY ANSWER WAS GIVEN UNDER OATH BY MS. WHITELEY. IT WAS NOT SUBJECT TO CROSS-EXAMINATION BY DEFENDANTS."

5164

THAT'S THE STATEMENT THAT EVERYBODY HAS ASKED ME TO GIVE TO YOU.

OKAY. WHAT IS NEXT?

MR. ESCHER: WE'RE PROCEEDING WITH THE

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PUBLICATION OF THE R.J. REYNOLDS TOBACCO COMPANY DOCUMENTS, YOUR HONOR.

THE COURT: OKAY.

MR. ESCHER: WOULD YOU GET THE LIGHTS, PLEASE. READING FROM DEFENDANTS' EXHIBIT 5156.

MS. CHABER: YOUR HONOR, JUST FOR CLARIFICATION. THESE ARE BEING OFFERED SOLELY FOR STATE OF MIND.

THE COURT: WE TALKED ABOUT THAT OUTSIDE THE JURY'S PRESENCE.

WHAT I NEED TO BE SURE OF -- AND I KNOW THAT YOU HAVE AN AGREEMENT ON THIS -- IS WHICH DOCUMENTS? NOW, IT IS THE CASE THAT THERE WERE SOME DOCUMENTS THAT WERE RECEIVED INTO EVIDENCE THAT I SHOULD TELL THE JURY WERE BEING OFFERED ONLY FOR STATE OF MIND BUT NOT FOR THE TRUTH OR ACCURACY OF THEM; IS THAT CORRECT?

MS. CHABER: YES.

MR. ESCHER: THAT'S CORRECT, YOUR HONOR.

THE COURT: WHAT ARE THE NUMBERS OF THOSE DOCUMENTS, SO I CAN BE SURE TO TELL THAT TO THE JURY?

IN OTHER WORDS, JURY, WHAT I'M GOING TO TELL YOU IN A MINUTE, IS CERTAIN DOCUMENTS THAT WERE RECEIVED INTO EVIDENCE WERE RECEIVED WITHOUT MY PUTTING ANY LIMITING INSTRUCTION ON THEM, BUT THE LAWYERS HAVE AGREED THAT WE

5165

SHOULD HAVE A LIMITING INSTRUCTION ON THEM.

SO THEY ARE GOING TO TELL US THE NUMBERS OF THOSE DOCUMENTS; RIGHT?

I'M GOING TELL YOU AS TO EACH OF THESE DOCUMENTS,

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THEY ARE NOT BEING OFFERED -- AM I DOING THIS RIGHT?
MR. ESCHER: YOUR HONOR, I THINK IT WOULD BE BEST IF THE PLAINTIFFS AND THE DEFENDANTS COULD SIT DOWN, COME UP WITH AN AGREED LIST ON THAT AND TELL WHAT YOU THE NUMBERS ARE, BECAUSE I DON'T THINK IT IS ALL OF THE ITEMS THAT HAVE JUST BEEN INTRODUCED.
THE COURT: IF YOU CAN DO THAT DURING THE AFTERNOON RECESS, WHY DON'T WE CLARIFY THAT WITH THE JURY TODAY.
I GATHER IT'S OKAY IF WE GO AHEAD WITH THE READING IN THE MEANWHILE? IS THAT OKAY WITH EVERYBODY?
MR. ESCHER: IT'S FINE WITH ME.
THE COURT: IS THAT OKAY?
MS. CHABER: AS TO THIS DOCUMENT THAT'S GOING UP NOW --
THE COURT: WHAT IS THE NUMBER OF IT?
MR. ESCHER: 5156, YOUR HONOR.
THE COURT: THAT WAS PREVIOUSLY ADMITTED, NOT TODAY; RIGHT? IS THAT IN EVIDENCE?
THE CLERK: I'LL CHECK.
IT'S NOT.
THE COURT: IT'S NOT IN EVIDENCE, I'M TOLD.
NOW, UNLESS YOU HAVE SOME AGREEMENT ABOUT THIS, YOU CAN'T READ FROM A DOCUMENT THAT'S NOT IN EVIDENCE.

5166

MR. ESCHER: YOUR HONOR, WE JUST INTRODUCED IT RIGHT BEFORE LUNCH --
THE COURT: THAT WASN'T IN THE LIST THIS MORNING.

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MR. ESCHER: 5156 WAS NOT ON THE LIST?
MS. CHABER: IT WAS NOT ON THE LIST. IT WAS A DOCUMENT WAS THAT OBJECTED TO.
MR. ESCHER: I WILL TAKE THIS ONE DOWN NOW, YOUR HONOR.
MS. CHABER: SOMETIMES I KNOW WHAT I'M TALKING ABOUT.
MR. ESCHER: I'M GOING TO SHOW 5175. IT'S A LETTER FROM THE DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, PUBLIC HEALTH SERVICE, NATIONAL INSTITUTES OF HEALTH, DATED AUGUST 12, 1977, TO:
"DR. ALAN ROGMAN, MANAGER, ANALYTICAL RESEARCH, RESEARCH DEPARTMENT, R.J. REYNOLDS TOBACCO COMPANY, WINSTON-SALEM NORTH, CAROLINA.
"DEAR DR. ROGMAN: IT IS WITH REGRET THAT I MUST INFORM YOU OF THE TERMINATION OF THE TOBACCO WORKING GROUP, OF WHICH YOU ARE A MEMBER. FROM TIME TO TIME, THE GOVERNMENT AND THE DEPARTMENT FIND IT NECESSARY TO REORGANIZE THE ADVISORY COMMITTEE STRUCTURE. THIS OFTEN RESULTS IN THE TERMINATION OF SOME OUTSIDE ADVISORY GROUPS. SUCH AS THE CASE FOR THE TOBACCO WORKING GROUP.
"I WOULD LIKE TO TAKE THIS OPPORTUNITY, HOWEVER, TO EXPRESS MY THANKS AND THE APPRECIATION OF THE

5167

NATIONAL CANCER INSTITUTE FOR YOUR SUBSTANTIAL CONTRIBUTIONS TO THE COMMITTEE.
"I DO NOT, HOWEVER, INTEND THIS LETTER AS A FAREWELL. THERE IS AN ACUTE SHORTAGE OF EXPERTS IN THIS FIELD AND I SINCERELY HOPE THAT NCI MAY

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BE ABLE TO CALL ON YOU TO CONSULT WITH THE SMOKING AND HEALTH PROGRAM IN ITS FUTURE ENDEAVORS."

I'LL SHOW EXHIBIT 5078.

THE CLERK: 5087.

MR. ESCHER: 5087. EXCUSE ME.

DATED AUGUST 21, 1967.

"CONTROL OF POLYCYCLIC AROMATIC HYDROCARBONS IN CIGARETTE SMOKE. A SURVEY.

"OBJECT: TO SUMMARIZE THE WORK DONE IN THIS COMPANY DESIGNED TO ALTER THE POLYCYCLIC AROMATIC HYDROCARBON CONTENT OF CIGARETTE SMOKE BY TREATMENT OF THE TOBACCO ROD AND/OR FILTER."

I'M GOING TO SHOW DEFENDANTS' EXHIBIT 5163, DATED OCTOBER 5, 1976.

"TOBACCO SUBSTITUTES: IN-HOUSE STUDIES.

"SUMMARY: R.J. REYNOLDS HAS INVESTIGATED TOBACCO SUBSTITUTES FOR AT LEAST 10 YEARS WITHIN ITS OWN RESEARCH AND DEVELOPMENT DEPARTMENTS. OVER 50 SEPARATE SUBSTANCES HAVE BEEN INVESTIGATED, WITH ALMOST COUNTLESS VARIATIONS ON INDIVIDUAL FORMULATIONS. A TABULAR SUMMARY OF THESE ACTIVITIES IS GIVEN HEREIN WITH REFERENCES

AND COMMENTS."

"PROJECTS TO INVESTIGATE TOBACCO SUBSTITUTES HAVE BEEN A FORMAL PART OF REYNOLDS RESEARCH AND DEVELOPMENT PROGRAMS SINCE AT LEAST 1966. SINCE THAT TIME OVER 50 SEPARATE SUBSTANCES HAVE BEEN

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INVESTIGATED FOR UTILITY AS TOBACCO SUBSTITUTES, WITH ALMOST INNUMERABLE VARIATIONS IN INDIVIDUAL FORMULATIONS."

SHOWING DEFENDANTS' EXHIBIT 5185, DATED AUGUST 21, 1970.

"EXPERIMENTS IN REMOVAL OF CO FROM CIGARETTE SMOKE.

"OBJECT: THE OBJECTIVE OF THE WORK REPORTED HEREIN WAS TO DISCOVER AN AGENT FOR THE SELECTIVE REMOVAL OF CO FROM CIGARETTE SMOKE, OR A TOBACCO ADDITIVE OR TREATMENT WHICH WOULD REDUCE THE AMOUNT OF CO PRODUCED BY CIGARETTES.

"SUMMARY: NUMEROUS MATERIALS HAVE BEEN INVESTIGATED IN THIS CONTINUING RESEARCH. NO MATERIAL HAS YET BEEN FOUND FOR WHICH SELECTIVE REMOVAL OF CO FROM CIGARETTE SMOKE HAS BEEN CONCLUSIVELY DEMONSTRATED. FURTHER, NO TOBACCO ADDITIVE HAS YET BEEN FOUND WHICH WILL REDUCE THE AMOUNT OF CO PRODUCED BY CIGARETTES. TESTING OF ALL OF THE MATERIALS REPORTED UPON HERE HAS NOT BEEN TERMINATED, SINCE THE RESULTS OF A FEW

EXPERIMENTS HAVE NOT BEEN CONCLUSIVE."

SHOWING DEFENDANTS' EXHIBIT 5293, DATED NOVEMBER

5169

3, 1980.

"THE EFFECTS OF CIGARETTE PAPER PERMEABILITY AND AIR DILUTION ON CARBON MONOXIDE DIFFUSION FROM THE TOBACCO ROD.

"OBJECT: THE OBJECT OF THIS RESEARCH WAS TO

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DETERMINE THE EFFECTS OF CIGARETTE PAPER PERMEABILITY AND AIR DILUTION ON THE EXTENT OF CO DIFFUSION FROM THE TOBACCO ROD AND ON TOTAL CO PRODUCTION."

"SUMMARY. THE FRACTION OF CO WHICH DIFFUSES FROM THE TOBACCO ROD INCREASES WITH INCREASING MOUTHEND DILUTION. WITH 80 PERCENT MOUTHEND DILUTION, UP TO 90 PERCENT OF THE CO WHICH ENTERS THE TOBACCO ROD DIFFUSES OUT OF THE TOBACCO ROD."

"THEREFORE, IN THE DEVELOPMENT OF LOW-CO DELIVERY CIGARETTES, IT SHOULD BE KEPT IN MIND THAT THE USE OF HIGH LEVELS OF AIR DILUTION RESULTS IN ENHANCED DIFFUSION OF CO OUT OF THE ROD BEFORE IT REACHES THE SMOKER'S MOUTH, LESS CO ENTERING THE TOBACCO ROD FROM THE FIRE CONE, AND LESS TOTAL CO PRODUCTION."

SHOWING DEFENDANTS' EXHIBIT 5629.

"DATA REQUIREMENTS AND STRATEGIES FOR CHEMICAL AND TOXOLOGICAL TESTING OF CHANGES IN CIGARETTE TECHNOLOGY," BY D. COOPER REES, DATED SEPTEMBER 30, 1994.

"THE PURPOSE OF THIS PAPER IS TO INTRODUCE THE

5170

READER TO THE APPROACH AND LOGIC USED IN FORMULATING A CHEMICAL/TOXICOLOGY TESTING/EVALUATION PLAN IN RESPONSE TO THE MISSION STATEMENT. THE MISSION STATEMENT IS TO ENSURE THAT RJRT DOES NOT SIGNIFICANTLY INCREASE THE BIOLOGICAL ACTIVITY OF ITS PRODUCTS."

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MS. CHABER: WOULD YOU GIVE A DATE ON THAT?
MR. ESCHER: I BELIEVE IT WAS SEPTEMBER 30, 1994.

YOUR, HONOR I'D LIKE TO OFFER INTO EVIDENCE THE NEXT DOCUMENT, WHICH I'M MARKING AS 6295.

(DOCUMENT MORE PARTICULARLY LISTED IN THE INDEX MARKED FOR IDENTIFICATION DEFENDANTS' EXHIBIT # 6295)

THE COURT: ANY OBJECTION TO 6295, MS. CHABER?
MR. ESCHER: HERE IS A THREE-HOLE PUNCHED COPY.
MS. CHABER: DID YOU SAY SOMETHING, YOUR HONOR?
THE COURT: I SAID, IS THERE ANY OBJECTION TO 6295?
MS. CHABER: NO.
THE COURT: 6295 IS RECEIVED.

(DOCUMENT MORE PARTICULARLY LISTED IN THE INDEX RECEIVED IN EVIDENCE AS DEFENDANTS' EXHIBIT # 6295)

MR. ESCHER: DATED NOVEMBER 28, 1979, ON RJR LETTERHEAD. TO: "PHILADELPHIA CHEWING GUM CORPORATION,

5171

EAGLE AND LAWRENCE ROADS, HAVERTOWN, PENNSYLVANIA.
"GENTLEMEN: WE ARE WRITING TO CONFIRM OUR AGREEMENT REGARDING THE CESSATION OF YOUR USE OF OUR TRADEMARKS IN CONNECTION WITH YOUR MANUFACTURE, SALE AND MARKETING OF CONFECTIONERY

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ITEMS IN THE UNITED STATES AND ELSEWHERE.
"RECENTLY, WE LEARNED THAT YOU ARE MARKETING BUBBLE GUM IN PACKAGING WHICH SIMULATES THE PACKAGING USED FOR OUR 'CAMEL' BRAND OF CIGARETTES. FURTHER, WE LEARNED THAT A FOREIGN COMPANY AFFILIATED WITH YOU IS MARKETING BUBBLE GUM IN PACKAGING WHICH SIMULATES THE PACKAGING USED FOR OUR 'WINSTON' BRAND OF CIGARETTES. WE HAVE OBJECTED TO THESE ACTIVITIES.
"YOU HAVE INDICATED THAT YOU WILL ACCOMMODATE OUR OBJECTION AND WE HAVE AGREED THAT AS SOON AS YOU HAVE DEPLETED YOUR CURRENT PRESENT INVENTORY OF SUCH GOODS, BUT, IN NO EVENT LATER THAN JUNE 30, 1980, YOU WILL CEASE AND, THEREAFTER, REFRAIN FROM THE MANUFACTURE, SALE AND MARKETING, IN THE UNITED STATES AND IN FOREIGN JURISDICTIONS, OF

BUBBLE GUM (OR ANY OTHER CONFECTIONERY ITEM) IN PACKAGING WHICH SIMULATES THE PACKAGING WHICH WE USE FOR OUR BRANDS OF CIGARETTES, INCLUDING, BUT NOT LIMITED TO, THE 'CAMEL', 'WINSTON', 'SALEM', 'DORAL', 'MORE', 'NOW', 'REAL' AND 'VANTAGE' BRANDS, AND FOR OTHER TOBACCO PRODUCTS,

INCLUDING, BUT NOT LIMITED TO, 'WINCHESTER' LITTLE CIGARS. YOU WILL CAUSE ALL COMPANIES AFFILIATED WITH YOU, INCLUDING, BUT NOT LIMITED TO, GUM BASE INTERNATIONAL INC., SWELL CONFECTIONS, LTD. AND AMERICAN CHEWING GUM, INC., TO REFRAIN FROM SIMILAR OFFENDING ACTIVITIES.

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"IN CONSIDERATION OF THE FOREGOING, WE WILL REFRAIN FROM TAKING ANY FURTHER ACTION AGAINST YOU IN CONNECTION WITH THE ACTIVITIES REFERRED TO ABOVE.

"IF THE FOREGOING CORRECTLY SETS FORTH OUR AGREEMENT, PLEASE SO INDICATE BY EXECUTING THIS LETTER AGREEMENT IN THE PLACE PROVIDED BELOW."

SIGNED BY "R.J. REYNOLDS TOBACCO COMPANY GENERAL COUNSEL AND SECRETARY, ACCEPTED AND AGREED TO: PHILADELPHIA GUM CORPORATION."

YOUR HONOR, I'D LIKE TO HAVE MARKED THE NEXT DOCUMENT. I'D LIKE TO OFFER IT INTO EVIDENCE. IT'S BEING MARKED AS 6296, YOUR HONOR.

(DOCUMENT MORE PARTICULARLY LISTED IN THE INDEX MARKED FOR IDENTIFICATION DEFENDANTS' EXHIBIT # 6296)

THE COURT: ANY OBJECTION TO THAT ONE?

MS. CHABER: NO OBJECTION.

THE COURT: 6296 IS RECEIVED.

(DOCUMENT MORE PARTICULARLY LISTED IN THE INDEX RECEIVED

IN EVIDENCE AS DEFENDANTS' EXHIBIT # 6296)

MR. ESCHER: AND ONE FOR YOU YOUR HONOR.

IT'S A LETTER ON THE LETTERHEAD OF R.J. REYNOLDS TOBACCO COMPANY, DATED SEPTEMBER 24, 1981, ADDRESSED TO:

"TELL CHOCOLATE NOVELTIES CORP., 3052 WEST

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21ST STREET, BROOKLYN, NEW YORK.
"GENTLEMEN: WE ARE WRITING TO CONFIRM OUR AGREEMENT REGARDING THE CESSATION OF YOUR USE OF OUR TRADEMARKS IN CONNECTION WITH YOUR MANUFACTURE, SALE, AND MARKETING OF CONFECTIONERY ITEMS IN THE UNITED STATES AND ELSEWHERE.
"RECENTLY, WE LEARNED THAT YOU ARE MANUFACTURING AND MARKETING A CANDY PRODUCT IN PACKAGING WHICH SIMULATES THE PACKAGING USED FOR OUR 'CAMEL' BRAND OF CIGARETTES. WE HAVE OBJECTED TO THESE ACTIVITIES."
SIGNED BY: "R.J. REYNOLDS TOBACCO COMPANY, ACCEPTED AND AGREED TO: TELL CHOCOLATE NOVELTIES CORP."
WE'RE FINISHED WITH OUR PUBLICATION, YOUR HONOR.
THE COURT: OKAY.
MR. HARDY: YOUR HONOR, DEFENDANTS AGREED THAT PLAINTIFFS MAY CALL THEIR REBUTTAL WITNESS OUT OF ORDER.
THE COURT: OKAY. LET ME JUST EXPLAIN TO THE JURY WHAT'S GOING ON. THE LAWYERS ARE ALL COOPERATING IN AN EFFORT TO GET THE EVIDENCE COMPLETED TODAY.
AFTER THE DEFENDANTS REST, THE PLAINTIFFS GET A

CHANCE TO PUT ON SOME REBUTTAL EVIDENCE, BUT BECAUSE WE HAVE A WITNESS THAT'S HERE AND AVAILABLE RIGHT NOW, WE ARE GOING TO INTERRUPT THE DEFENDANTS' DEFENSE AND WE GOING TO LET THE PLAINTIFFS CALL A REBUTTAL WITNESS OUT OF ORDER.
AND WHO WOULD THAT BE?
MS. CHABER: SUSANA ARCE, A-R-C-E.
THE COURT: OKAY. THANK YOU.

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THE CLERK: PLEASE COME FORWARD. PLEASE STAND RIGHT HERE AND RAISE YOUR RIGHT HAND. THIS WAY, PLEASE.

TESTIMONY OF
SUSANA ARCE,

A WITNESS CALLED ON BEHALF OF THE PLAINTIFFS, HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

THE CLERK: PLEASE STATE YOUR NAME.
THE WITNESS: SUSANA, LAST NAME IS A-R-C-E.
THE CLERK: PLEASE SPELL YOUR FIRST NAME.
THE WITNESS: S-U-S-A-N-A.
THE CLERK: THANK YOU. PLEASE TAKE THE STAND.

DIRECT EXAMINATION

BY MS. CHABER: Q. GOOD AFTERNOON.
A. GOOD AFTERNOON.
Q. THANK YOU FOR BEING PATIENT. YOU'VE BEEN WAITING ALL MORNING, I KNOW.
MS. ARCE, WHAT DO YOU DO FOR A LIVING?
A. ASSISTANT PRINCIPAL AT NORDHOFF HIGH SCHOOL.
Q. HOW LONG HAVE YOU BEEN AT NORDHOFF HIGH SCHOOL?
A. FOR 33 YEARS.

5175

Q. AND DO YOU KNOW LESLIE WHITELEY?
A. I DID, YES.
Q. YOU KNEW HER WHEN SHE WAS IN SCHOOL AT NORDHOFF?
A. WHEN SHE WAS IN HIGH SCHOOL, YES.
Q. AND HAVE YOU HAD SOME DEALINGS WITH LESLIE IN RECENT TIMES?
A. LAST YEAR.

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Q. AND WHAT WERE THE DEALINGS LAST YEAR WITH LESLIE?
A. LAST YEAR, SHE OBSERVED -- SHE HAPPENED TO BE GOING BY THE SCHOOL, OBSERVED SOME STUDENTS LEAVING SCHOOL AND LIGHTING CIGARETTES, AND SHE BECAME VERY UPSET ABOUT THAT AND CONTACTED --
MS. MASON: OBJECTION, YOUR HONOR.
THE COURT: WHAT?
MS. MASON: HEARSAY.
THE COURT: ALL RIGHT.
AT THE POINT WHERE SHE BECAME UPSET ABOUT IT; IS THAT IT? YOU WANT ME TO STRIKE THAT PORTION?
MS. MASON: I DO, YOUR HONOR.
THE COURT: I WILL STRIKE THE REFERENCE TO HER BEING UPSET.
MS. CHABER: OKAY.
MS. CHABER: Q. WHAT DID LESLIE DO?
A. SHE CALLED ME TO DISCUSS THE FACT THAT OUR --
MS. MASON: OBJECTION, YOUR HONOR. SAME OBJECTION. HEARSAY.
THE COURT: SUSTAINED.
MS. CHABER: Q. SHE CALLED YOU, AND YOU HAD A

5176

CONVERSATION --

A. YES.
Q. -- WITH HER?
A. YES.
Q. AND AFTER YOU HAD A CONVERSATION WITH LESLIE, DID ANYTHING RESULT FROM THAT CONVERSATION?
A. YES. SHE CAME TO SCHOOL AND SPOKE TO SOME

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STUDENTS IN THE PHYSICAL EDUCATION CLASSES ABOUT THE DANGER OF SMOKING.

Q. OKAY. AND IS THAT ONE OF THE PLACES THAT, AT THE PRESENT TIME AT NORDHOFF HIGH SCHOOL, WHERE THERE ARE DISCUSSIONS WITH THE STUDENTS ABOUT THE DANGERS OF SMOKING?

A. ONE OF THE PLACES, YES.

Q. AND WHERE ELSE PRESENTLY IS THAT DONE?

A. PRESENTLY, THERE IS A HEALTH CLASS, A ONE-SEMESTER HEALTH CLASS, THAT ALL NINTH GRADERS TAKE.

Q. AND THAT HEALTH CLASS, DOES IT DEAL WITH JUST TOBACCO USE?

MR. ESCHER: YOUR HONOR, I OBJECT TO THIS LINE OF QUESTIONING ON BOTH RELEVANCE AND 352 GROUNDS.

THE COURT: SUSTAINED ON BOTH GROUNDS.

MS. CHABER: Q. I'D LIKE TO TAKE YOU BACKWARDS NOW IN TIME FROM THE PRESENT AND WHAT'S BEING DONE PRESENTLY AT NORDHOFF HIGH SCHOOL TO THE TIME PERIOD IN THE 1970S.

FIRST OF ALL, YOU WERE THERE AT NORDHOFF?

A. YES.

Q. -- AT NORDHOFF HIGH SCHOOL IN THE 1970S?

A. YES, I WAS.

5177

Q. WHEN DID YOU FIRST COME TO NORDHOFF?

A. IN 1967.

Q. AND DID YOU ALSO GO TO HIGH SCHOOL --

A. YES.

Q. -- AT NORDHOFF HIGH SCHOOL?

A. YES, I DID.

Q. I'M GOING -- I HAVE DONE PRETTY WELL WITH THIS ONE, BUT THE COURT REPORTER HERE IS TAKING DOWN EVERYTHING

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THAT WE SAY, AND IF YOU START ANSWERING BEFORE I'VE COMPLETED MY QUESTION, OR I DO THE SAME TO YOU, IT MAKES IT VERY DIFFICULT FOR HER TO DO HER JOB.

A. OKAY.

Q. SO IF YOU COULD JUST PAUSE A MINUTE AFTER I'VE ASKED A QUESTION, AND I WILL TRY NOT TO JUMP ON YOUR ANSWERS. OKAY?

A. FINE.

Q. HAVE YOU DONE THIS BEFORE, TESTIFIED IN A COURTROOM?

A. YES.

Q. OKAY. YOU WENT TO NORDHOFF HIGH SCHOOL?

A. YES, I DID.

Q. AND WAS THAT IN THE 1960S?

A. NO, IT WAS IN THE 1950S.

Q. OKAY. AND AT THE TIME THAT YOU WENT TO NORDHOFF HIGH SCHOOL IN THE 1950S, WERE YOU TAUGHT ANYTHING ABOUT CIGARETTE SMOKING CAUSING CANCER?

MR. ESCHER: OBJECTION. RELEVANCE, YOUR HONOR. 352.

5178

MS. CHABER: THIS GOES TO COMMUNITY AWARENESS, YOUR HONOR.

MR. ESCHER: I THINK IT'S TOO REMOTE AS TO TIME, YOUR HONOR.

THE COURT: IT'S A 352 ISSUE.

HOW LONG ARE YOU GOING TO BE ON THIS SUBJECT?

MS. CHABER: NOT VERY.

THE COURT: WHAT DOES THAT MEAN? BECAUSE IT'S A

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352 ISSUE, SO I'M GOING TO TAKE INTO ACCOUNT HOW LONG THIS IS GOING TO TAKE.

MS. CHABER: IT MEANS I WAS GOING TO TAKE IT FROM HERE TO THE TIME PERIOD WHEN SHE FIRST CAME TO THE SCHOOL.

THE COURT: I'M TALKING ABOUT WHAT SHE WAS TAUGHT IN THE '50S. THEY ARE SAYING IT'S TOO REMOTE. AND I'M JUST SAYING, HOW LONG ARE YOU GOING TO BE?

MS. CHABER: I HAVE LIKE THE FOLLOW-UP QUESTION TO THAT.

MR. ESCHER: YOUR HONOR --

MS. CHABER: AND THEN I'M MOVING ON TO WHEN SHE FIRST CAME TO TEACH AT NORDHOFF HIGH SCHOOL.

MR. ESCHER: MY CONCERN IS THAT DISCUSSIONS ENDING UP -- WELL, I DON'T THINK WE SHOULD ARGUE THE FIRST ISSUE IN FRONT OF THE COURT ANYMORE.

THE COURT: ALL RIGHT. LET'S HAVE A QUICK DISCUSSION. THIS WON'T TAKE VERY LONG.

(COURT AND COUNSEL CONFER OUTSIDE

5179

THE PRESENCE OF THE JURY)

THE COURT: AFTER A SIDEBAR, AM I RULING ON THIS, ARE YOU WITHDRAWING --

MR. ESCHER: I'M WITHDRAWING THAT OBJECTION.

THE COURT: ALL RIGHT. YOU CAN GO AHEAD.

MS. CHABER: OKAY. CAN WE HAVE THE QUESTION READ BACK.

THE COURT: I THINK IT WAS: "IN THE 1950S, WERE

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THE DANGERS OF SMOKING TAUGHT AT NORDHOFF HIGH SCHOOL?"

MS. CHABER: Q. WHEN YOU WENT TO SCHOOL THERE?

A. WAS IT TAUGHT?

Q. YES.

A. NO.

Q. YOU CAME THERE IN THE 1960S?

A. YES.

Q. AND WHAT WAS YOUR FIRST JOB THERE?

A. I TAUGHT ENGLISH.

Q. OKAY. AND HOW LONG A TIME PERIOD DID YOU DO THAT, TEACHING ENGLISH?

A. I TAUGHT ENGLISH, AND THEN I TAUGHT SPANISH UNTIL -- UNTIL JANUARY OF 1974.

Q. AND THEN, WHAT HAPPENED IN JANUARY OF 1974?

A. I BECAME AN ADMINISTRATOR. I WAS DEAN OF GIRLS AT THAT TIME.

Q. AND TELL US A LITTLE BIT ABOUT THE DEAN OF GIRLS.

FIRST OF ALL, YOU KNOW MR. GARST?

A. YES.

5180

Q. AND WHEN YOU WERE THE DEAN OF GIRLS, WAS HE THE DEAN OF BOYS?

A. YES.

Q. SO TELL US HOW YOUR RESPONSIBILITIES GOT DIVIDED UP.

A. AT THAT TIME, I HANDLED THE DISCIPLINE FOR THE GIRLS AND HE HANDLED THE DISCIPLINE FOR THE BOYS.

Q. OKAY. AND DID YOU AND MR. GARST DEAL IN THE SAME WAY WITH THE STUDENTS THAT YOU WERE DISCIPLINING; IN OTHER

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WORDS, DID YOU -- WAS THERE A SET PATTERN OF DISCIPLINE THAT HE FOLLOWED AND YOU FOLLOWED, OR DID YOU EACH DO WHAT YOU FELT WAS THE APPROPRIATE THING TO DO FOR THE CIRCUMSTANCES?

MR. ESCHER: OBJECTION, YOUR HONOR. VAGUE, LEADING, AND LACK OF FOUNDATION.

THE COURT: SUSTAINED.

THE REASON, JUST SO YOU UNDERSTAND, THERE IS NO FOUNDATION IN THIS RECORD RIGHT NOW. YOU MAY OR MAY NOT BE ABLE TO LAY IT.

MS. CHABER: Q. DURING THE TIME PERIOD THAT YOU WERE IN THE ADMINISTRATION, FROM 1974 -- AND YOU STILL ARE; CORRECT?

A. YES.

Q. AND ARE YOU STILL DEAN OF GIRLS?

A. NO. THAT WAS ABOUT TWO YEARS. THEN THE TITLES WERE CHANGED TO ASSISTANT PRINCIPAL.

Q. AND YOU'VE REMAINED AN ASSISTANT PRINCIPAL?

A. YES.

Q. AND THROUGHOUT THE TIME PERIOD THAT YOU WERE IN

5181

ADMINISTRATION, WOULD YOU BE AWARE OF WHAT OTHER ADMINISTRATORS WERE DOING WITH RESPECT TO DISCIPLINE THAT WAS UNDER THEIR CONTROL?

A. YES.

Q. YOU'D HAVE CONVERSATIONS?

A. WE CONFERRED.

Q. OKAY. AND MR. GARST HAD THE SAME JOB THAT YOU DID, ONLY WITH BOYS, AS YOU DID WITH GIRLS; IS THAT CORRECT?

A. FOR TWO YEARS.

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Q. AND DURING THOSE TWO YEARS -- AND BY THE WAY, THOSE TWO YEARS WERE 1974 TO '76?
A. YES.
Q. THOSE WERE THE TWO YEARS THAT LESLIE WHITELEY WAS AT NORDHOFF HIGH; CORRECT?
A. YES.
Q. SO IF THERE WERE ISSUES OF DISCIPLINE RELATING TO LESLIE WHITELEY, WOULD MR. GARST DEAL WITH IT OR WOULD YOU DEAL WITH IT?
A. I WOULD HAVE DEALT WITH IT.
Q. OKAY. AND LET'S TALK ABOUT THE SCHOOL IN 1974 WHEN YOU FIRST BECAME THE DEAN OF GIRLS.
WAS THERE SMOKING ALLOWED AT THE SCHOOL?
A. NO.
Q. FOR ANYONE?
A. ADULTS WERE ABLE TO SMOKE.
Q. AND THAT INCLUDED THE TEACHERS?
A. YES.
Q. THE ADMINISTRATORS?

5182

A. YES.
Q. THE PRINCIPAL?
A. IF HE WANTED TO.
Q. AND IT WAS A HE AT THAT TIME, MR. OWENS?
A. YES.
Q. AND THE CUSTODIAN?
A. YES.
Q. THE STUDENTS?
A. NO.

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Q. OKAY. SO THE STUDENTS WEREN'T ALLOWED.
WAS THERE A SCHOOL RULE THAT PROHIBITED THE STUDENTS FROM SMOKING?
A. YES.
Q. AND HOW WAS THAT RULE COMMUNICATED TO THE STUDENTS?
A. THROUGH THE BEGINNING OF THE YEAR ASSEMBLY, WITH A FIRST-DAY ASSEMBLY, AND THROUGH HANDOUTS WITH SCHOOL POLICY.
Q. OKAY. AND ARE YOU AWARE OF ANY ASSEMBLY IN 1974, '75, OR '76, AT THE BEGINNING OF THE YEAR, WHERE THE RULE ABOUT NOT SMOKING IN SCHOOL WAS RELATED TO THERE BEING A HAZARD FROM SMOKING?
A. IT WAS --
MS. MASON: OBJECTION.
MR. ESCHER: OBJECTION. I'M SORRY. OBJECTION. VAGUE. CALLS FOR HEARSAY, YOUR HONOR.
THE COURT: WELL, THE OBJECTION IS THAT IT CALLS FOR HEARSAY.

5183
MR. ESCHER: AND VAGUE, YOUR HONOR.
THE COURT: VAGUE? I DON'T THINK IT'S VAGUE, BUT IT'S HEARSAY IF IT'S OFFERED FOR THE TRUTH.
MS. CHABER: Q. WERE YOU PRESENT AT ANY OF THE FIRST-DAY ASSEMBLIES?
A. YES.

Q. AND DURING 1974, 1975 AND 1976, WERE YOU THERE AT THE FIRST-DAY ASSEMBLY WHERE THE RULES WERE TOLD TO THE STUDENTS?

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A. THE RULES WERE VERY GENERALLY REFERRED TO, YES.
Q. OKAY. AND ARE YOU AWARE OF THERE BEING ANY HANDOUTS GIVEN TO THE STUDENTS FROM THAT ASSEMBLY?
A. THEY WERE GIVEN HANDOUTS WITHIN THE FIRST WEEK OF SCHOOL.
Q. AND THOSE HANDOUTS ARE THINGS THAT YOU WOULD HAVE LOOKED AT AND REVIEWED?
A. YES.
Q. AND DID YOU HAVE SOME ROLE IN HELPING --
A. YES.
Q. -- TO PREPARE THEM?
A. YES.
Q. YOU'RE ANSWERING BEFORE I FINISH.
YOU WOULD HAVE SOME ROLE IN HELPING TO PREPARE THEM; CORRECT?
A. YES.
Q. IN THOSE HANDOUTS, WERE THERE ANY WARNINGS ABOUT HEALTH HAZARDS ABOUT SMOKING?
MR. ESCHER: OBJECTION, YOUR HONOR. HEARSAY.

5184

THE COURT: IT IS IF IT'S OFFERED FOR THE TRUTH OF WHAT THE CONTENT WAS, BUT NOT IF IT'S NOT.
SO WHAT ARE YOU OFFERING IT FOR? ARE YOU OFFERING THIS AS EVIDENCE OF THE TRUTH OF ANYTHING THAT WAS COMMUNICATED?
MS. CHABER: NO, I'M OFFERING IT AS EVIDENCE OF THE COMMUNICATION.
THE COURT: THE FACT OF EITHER THE EXISTENCE OR NONEXISTENCE OF A COMMUNICATION?
MS. CHABER: YES.

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THE COURT: ANY OBJECTION TO THAT? IT'S NOT HEARSAY. IT'S NOT BEING OFFERED FOR THE TRUTH OF ANYTHING.
MR. ESCHER: NO, YOUR HONOR.
THE COURT: OKAY.
MS. CHABER: Q. AT THE ASSEMBLY, THE FIRST-DAY ASSEMBLY, WHEN THE RULES ABOUT THERE NOT BEING SMOKING ON THE SCHOOL GROUNDS WERE MENTIONED, WOULD YOU CALL IT A DISCUSSION?
A. NO.
Q. WAS THERE ANY INFORMATION GIVEN TO THE STUDENTS ORALLY ABOUT CIGARETTE SMOKING AND HEALTH HAZARDS?
A. NO.
MR. ESCHER: OBJECTION. HEARSAY.
THE COURT: NOT WITH THAT ANSWER, IT'S NOT.
MS. CHABER: Q. NOW, THE TEACHERS, YOU MENTIONED, COULD SMOKE AT SCHOOL?
A. YES.
Q. WHERE WERE THEY ALLOWED TO SMOKE?

5185
A. IN THE TEACHERS' LOUNGE.
Q. CAN YOU DESCRIBE THE TEACHERS LOUNGE? GIVE US AN IDEA OF THE SIZE OF IT.
A. NOT A VERY LARGE ROOM. PROBABLY FROM RIGHT HERE OVER TO THIS WALL (INDICATING), TO THE GATE OVER THERE.
Q. OKAY. I'M TERRIBLE AT GUESSING THESE THINGS, BUT YOU'RE TALKING FROM --
A. I CAN'T GUESS THE DIMENSIONS.
Q. WHAT WAS IN THE LOUNGE?
A. TWO LONG TABLES, WITH CHAIRS ON BOTH SIDES, AND

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TWO SOFAS.
Q. AND THAT WAS --
A. A COFFEE TABLE.
Q. AND THAT WAS IT?
A. YES.
Q. AND THAT PRETTY MUCH TOOK UP THE WHOLE ROOM?
A. YES.
Q. AND HOW MANY TEACHES WERE THERE AT THE SCHOOL AT THAT TIME?
A. MAYBE 45.
Q. OKAY. I'M SURE THEY ALL WOULDN'T BE IN THE ROOM AT THE SAME TIME, WOULD THEY?
A. NO. BUT MANY WOULD.
Q. OKAY. LUNCHTIME?
A. YES.
Q. WOULD THE TEACHERS ALL BE THERE?
A. YES.
Q. WERE THERE ASHTRAYS IN THAT ROOM?

5186
A. YES.
Q. AND IF YOU WENT INTO THAT ROOM WITH RESPECT TO THERE BEING, SAY, A LUNCHTIME, CAN YOU GIVE US AN IDEA WHAT PERCENTAGE OF THE TEACHERS WOULD BE SMOKING?
A. PROBABLY 70 PERCENT.
Q. NOW, I TAKE IT THAT HAS CHANGED IN THE PRESENT TIME?
A. YES.
Q. OKAY. AND THERE'S NO MORE SMOKING ALLOWED IN THE SCHOOL?

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A. IT'S A SMOKE-FREE CAMPUS.
Q. WAS THERE A DISCUSSION BACK IN THE 1970S TIME PERIOD ABOUT MAKING NORDHOFF HIGH SCHOOL OR ALLOWING NORDHOFF HIGH SCHOOL STUDENTS TO HAVE A PLACE TO SMOKE?
A. YES, THERE WAS.
Q. AND WHAT WAS THE REASON THAT THAT WAS BEING DISCUSSED?
MR. ESCHER: OBJECTION. LACK OF FOUNDATION.
THE COURT: SUSTAINED.
MS. CHABER: Q. WERE YOU INVOLVED IN THE ISSUES THAT WERE GOING ON ABOUT WHETHER OR NOT THERE SHOULD BE A PLACE FOR NORDHOFF STUDENTS TO SMOKE?
A. YES, I WAS.
Q. AND WERE YOU AN ADMINISTRATOR DURING THAT TIME PERIOD?
A. THAT'S RIGHT.
Q. AND WHAT WAS THE REASON THAT IT WAS BEING PROPOSED?

5187

MR. ESCHER: OBJECTION. LACK OF FOUNDATION.
THE COURT: SUSTAINED IN THIS RECORD. THERE IS NOT A FOUNDATION.
MS. CHABER: Q. WHO WAS PROPOSING THAT THERE BE A PLACE FOR STUDENTS TO SMOKE?
A. I THINK IT WAS THE STUDENTS WHO WERE PROPOSING THAT.
Q. OKAY. AND THEY TOOK IT TO THE ADMINISTRATION?
A. YES, THEY DID.
Q. AND YOU WERE ONE OF THE ADMINISTRATORS THAT IT GOT TAKEN TO?

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A. YES.
Q. AND WAS ONE OF THE PEOPLE WHO WAS THERE LIKE A STUDENT REPRESENTATIVE, OR HOW DID THAT WORK?
A. THERE WAS A STUDENT REPRESENTATIVE ON THE SCHOOL BOARD WHO WOULD BRING STUDENT CONCERNS TO THE SCHOOL BOARD.
Q. AND I TAKE IT, THE SCHOOL BOARD WAS ALSO INVOLVED IN THE QUESTION OF WHETHER OR NOT NORDHOFF SHOULD HAVE A SMOKING AREA FOR STUDENTS?
A. STATE LAW GAVE THEM THAT OPPORTUNITY, TO CREATE -- IN EACH LOCAL SCHOOL DISTRICT, TO CREATE A SMOKING AREA ON CAMPUS, IF THEY CHOSE TO DO SO.
Q. SO IT WAS NOT AGAINST THE STATE LAW IF A SCHOOL CHOSE TO HAVE AN AREA WHERE STUDENTS COULD SMOKE CIGARETTES?
A. THAT'S CORRECT.
Q. IN TERMS OF YOUR ROLE AS THE DEAN OF GIRLS IN THIS -- AGAIN, WE ARE LIMITING IT TO THIS SAME TIME PERIOD IN THE 1970S -- WAS CIGARETTE SMOKING ON SCHOOL GROUNDS PART

OF YOUR DISCIPLINARY RESPONSIBILITIES?
A. YES, IT WAS.
Q. AND WERE THERE SET RULES FOR WHAT HAPPENED IF A GIRL -- I TAKE IT YOU ONLY DEALT WITH THE GIRLS?
A. MOST OF THE TIME. WE SHARED, IF WE NEEDED TO, DEPENDING ON IF SOMEONE WAS BUSY WITH ANOTHER SITUATION. WE DID SHARE.
Q. AND I TAKE IT THERE WERE TIMES DURING THIS TIME PERIOD WHERE YOU CAUGHT GIRLS SMOKING?
A. YES.
Q. WHERE WAS THE PLACE -- AND I TAKE IT THERE WAS

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MORE THAN ONE GIRL THAT YOU CAUGHT?
A. YES.
Q. CAN YOU GIVE US AN IDEA IN A YEAR, DURING THAT TIME PERIOD, ABOUT HOW MANY GIRLS GOT DISCIPLINED FOR SMOKING?
A. QUITE A FEW. I CAN'T GIVE YOU A SPECIFIC NUMBER.
Q. AND WAS THERE LIKE A GENERAL PLACE THAT YOU WOULD CATCH THEM?
A. YES.
Q. AND WHERE WAS THAT?
A. IN THE GIRLS' BATHROOM.
Q. AND WAS THERE ANY VISIBLE SMOKE OR SMELL OF SMOKE IN THE GIRLS' BATHROOM?
A. YES, THERE WAS.
Q. AND WAS THAT ON A CONTINUOUS BASIS DURING THIS TIME?
A. THAT MADE IT VERY DIFFICULT FOR OTHERS STUDENTS

5189

TO GO IN THERE. THERE WERE MANY STUDENTS WHO DID NOT SMOKE AND THAT WAS OFFENSIVE TO THEM TO GO IN TO USE THE RESTROOM AND HAVE SO MUCH SMOKE THERE.
Q. THERE HAS BEEN SOME TESTIMONY IN THIS COURT THAT LESLIE GOT CAUGHT SMOKING ON THE FIRST DAY OF SCHOOL AT NORDHOFF HIGH.
WOULD THAT HAVE BEEN YOU WHO CAUGHT HER?
A. YES, IT WAS.
Q. AND WHAT WOULD YOU DO WHEN YOU CAUGHT A GIRL SMOKING, FOR EXAMPLE, IN THE GIRLS' BATHROOM?
A. WE WERE REQUIRED TO SUSPEND THEM.
Q. NOW, IT WAS NOT A SUSPENSION OUT OF SCHOOL, WAS

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IT?
A. YOU KNOW, I'M NOT SURE. SOMETIMES IT WAS. OTHER TIMES, WE HAD AN IN-SCHOOL SUSPENSION FACILITY, AND I'M NOT QUITE SURE IF WE HAD IT AT THAT TIME.
Q. AND IF IT WAS IN SCHOOL, THEY WENT TO THIS ROOM AND SAT THERE AND WERE SUPPOSED TO WORK THE WHOLE TIME?
A. THEY WENT TO A TRAILER WHERE THEY WERE SUPPOSED TO DO THEIR HOMEWORK.
Q. AND WAS THERE ANY SET NUMBER OF DAYS THAT THIS PUNISHMENT WOULD GO ON FOR?
A. IT WAS SET, BUT I CAN'T -- I'M NOT POSITIVE OF THE NUMBER RIGHT NOW.
Q. OKAY. IF THE TESTIMONY WAS ABOUT THREE DAYS, WOULD THAT SOUND ABOUT RIGHT?
A. YES.
Q. DID YOU, IN THE COURSE OF CATCHING A GIRL

5190
SMOKING -- WE ARE TALKING ABOUT, AGAIN, IN THE 1970S -- IN CATCHING A GIRL SMOKING IN THE GIRLS' BATHROOM, DID YOU GIVE THAT GIRL A LECTURE ABOUT THE HEALTH HAZARDS OF SMOKING?
A. NOT NECESSARILY ABOUT THE HEALTH HAZARDS.
Q. WHAT DO YOU MEAN BY THAT?
A. I TOLD THEM IT WAS A VIOLATION OF THE LAW. THEY SMELLED LIKE SMOKE. THEY MADE IT DIFFICULT FOR OTHER STUDENTS TO GO INTO THE RESTROOMS.
THERE'S A POSSIBILITY I MIGHT HAVE SAID, "IT DOESN'T LOOK TOO COOL TO BE SMOKING," OR "IT'S NOT GOOD FOR YOU," SOMETHING OF THAT SORT. ANY NUMBER OF THOSE SCENARIOS WOULD HAVE WORKED.

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Q. DURING THAT TIME PERIOD IN THE 1970S, DO YOU HAVE ANY RECOLLECTION OF EVER TELLING ANY OF THE GIRLS THAT YOU CAUGHT SMOKING THAT CIGARETTE SMOKING CAUSED CANCER?
A. I'M NOT SURE THAT I KNEW AT THAT TIME THAT IT DID.
Q. IN TERMS OF WHAT WAS GOING ON OUT IN THE COMMUNITY, WAS THERE, AT LEAST IN YOUR MIND, ANY KIND OF A CONTROVERSY AS TO WHETHER CIGARETTE SMOKING CAUSED CANCER?
MR. ESCHER: OBJECTION. LACK OF FOUNDATION. VAGUE, YOUR HONOR.
THE COURT: SUSTAINED.
MS. CHABER: Q. YOU DEALT WITH MANY PARENTS OF SCHOOL KIDS DURING THIS TIME PERIOD?
A. YES.
Q. YOU LIVED IN THE COMMUNITY?
A. YES.

5191

Q. YOU READ THE LOCAL NEWSPAPERS?
A. YES.
Q. YOU KEPT YOURSELF INFORMED ABOUT INFORMATION AND THINGS THAT WERE HAPPENING IN YOUR COMMUNITY AND ELSEWHERE?
A. YES.
Q. AND DURING THIS TIME PERIOD, DID YOU BELIEVE THAT CIGARETTE SMOKING HAD BEEN PROVED TO CAUSE LUNG CANCER?
A. I DON'T KNOW THAT I BELIEVED THAT OR KNEW THAT.
Q. AND DID YOU HAVE ANY KIND OF PICTURES OF BLACK LUNGS OR DISEASED BODY PARTS THAT YOU WOULD SHOW TO THE GIRLS IF YOU CAUGHT THEM SMOKING?
A. NO.
Q. THAT WASN'T SOMETHING THAT YOU DID?

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A. NO.
Q. HAVE YOU HAD -- LET ME ASK THIS QUESTION: WERE THERE ANY COURSES DURING THIS TIME PERIOD, 1974 TO 1976, WHEN YOU WERE DEAN OF GIRLS, THAT WERE SPECIFIC COURSES ON HEALTH WHERE CIGARETTE SMOKING HAZARDS WERE TAUGHT?
MR. ESCHER: OBJECTION. LACK OF FOUNDATION.
THE COURT: WELL, AS THE DEAN -- AS THE DEAN, WERE YOU FAMILIAR WITH THE CURRICULUM THAT WAS BEING TAUGHT THERE?
THE WITNESS: YES.
THE COURT: WAS THAT PART OF YOUR JOB, TO GET INVOLVED IN THE CURRICULUM?
THE WITNESS: YES.
THE COURT: ALL RIGHT. I WILL ALLOW IT.
MS. CHABER: Q. DO YOU HAVE THE QUESTION IN

5192

MIND?
A. SAY IT AGAIN, PLEASE.
Q. IN THIS 1974 TO 1976 TIME PERIOD, WERE THERE ANY COURSES THAT SPECIFICALLY TAUGHT ABOUT THE HEALTH HAZARDS OF CIGARETTE SMOKING?
A. NO COURSES THAT TAUGHT THAT.
Q. WAS THERE ANY INSTRUCTION THAT YOU'RE AWARE OF DURING THAT TIME PERIOD ON THE HEALTH HAZARDS OF SMOKING?
A. THERE WERE SEGMENTS OF CLASSES WHERE CERTAIN GENERAL STATE CONCERNS WERE BROUGHT UP, AND THEY HAD TO DO WITH FIRST AID, SUBSTANCE AND HEALTH, HUMAN SEXUALITY.
Q. AND WHAT CLASSES WOULD THAT BE IN?
A. WELL, I THOUGHT -- I THOUGHT AT THE TIME THAT IT

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WAS IN THE DRIVERS' ED -- AT THE END OF THE DRIVERS' EDUCATION COURSE.

BUT IN LOOKING AT THE CURRICULUM FOR THAT SPECIFIC ERA, I DIDN'T FIND THAT TO BE THE CASE.

Q. OKAY. AND YOU DID GO BACK AND REVIEW RECORDS AT NORDHOFF HIGH TO SEE WHAT WAS BEING TAUGHT DURING THE TIME PERIOD WHEN LESLIE WHITELEY WAS AT THAT SCHOOL?

A. I CONSULTED THE ACCREDITATION DOCUMENT THAT WAS MADE IN NOVEMBER OF 1973. I THINK IT WAS NOVEMBER.

MR. ESCHER: YOUR HONOR, EXCUSE ME. I THINK SHE IS JUST RECITING HEARSAY.

THE COURT: IT SOUNDS LIKE IT.

MR. ESCHER: OBJECTION.

THE COURT: IT SOUNDS LOOK IT.

MS. CHABER: Q. WERE YOU, DURING THE COURSE OF

5193

THE TIME THAT YOU WERE AN ADMINISTRATOR AT NORDHOFF HIGH SCHOOL DURING THE 1974 TO '76 TIME PERIOD, FAMILIAR WITH THE CURRICULUM THAT WAS TAUGHT AT THE SCHOOL? WOULD YOU, IN OTHER WORDS, BE AWARE OF WHAT WAS BEING TAUGHT?

A. YES.

Q. AND WERE YOU INVOLVED AT ALL IN -- YOU SAID SOMETHING ABOUT AN ACCREDITATION PROCESS?

A. YES.

Q. TELL US WHAT THE ACCREDITATION PROCESS IS.

A. THE WESTERN ASSOCIATION OF SCHOOLS AND COLLEGES ACCREDITS HIGH SCHOOLS EVERY CERTAIN -- DURING A CERTAIN PERIOD OF TIME. AND THEY CAN GIVE A CERTAIN NUMBER OF YEARS OF ACCREDITATION, DEPENDING ON HOW WELL THE SCHOOL IS

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REACHING THEIR GOALS.
AND IN OUR PARTICULAR SCHOOL, WE'VE ALWAYS HAD A SIX-YEAR ACCREDITATION, WHICH IS THE MAXIMUM. SO THERE WAS AN ACCREDITATION GROUP VISITING THE SCHOOL IN 1973 TO ASSESS HOW WELL WE WERE PERFORMING.

Q. AND WAS THAT ACCREDITATION THEN AWARDED TO THE SCHOOL?

A. YES, IT WAS.

Q. AND WAS THAT FOR THE SIX-YEAR TIME PERIOD?

A. YES, IT WAS.

MS. CHABER: I'D LIKE TO HAVE HIS MARKED AS PLAINTIFFS' NEXT IN ORDER. I THINK I TOOK YOUR HOLE-PUNCHED COPY, YOUR HONOR. I HAVE TO FIND IT, BECAUSE I MARKED ON IT.

THE COURT: I DON'T MIND THAT IT'S MARKED ON, IF

5194

YOU DON'T, UNLESS THERE IS --

MS. CHABER: I THINK IT'S PROBABLY EASIER TO HOLE-PUNCH A NEW ONE.

THE COURT: WHATEVER YOU WANT.

MS. CHABER: THANK YOU.

SEE HOW MUCH EASIER IT WAS TO HOLE-PUNCH IT.

THE COURT: TATSUO, WHAT IS OUR NEXT NUMBER?

THE CLERK: 1946.

THE COURT: 1946.

(DOCUMENT MORE PARTICULARLY LISTED IN THE INDEX MARKED FOR IDENTIFICATION PLAINTIFFS' EXHIBIT # 1946)

MS. CHABER: IT'S A THREE-PAGE DOCUMENT. AS

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SOON AS IT'S MARKED, I'LL BRING YOU OVER ONE.
Q. ARE YOU A PH.D.?
A. NO.
Q. NO. I HAVE BEEN CALLING EVERYBODY "DOCTOR" HERE. I JUST WANTED TO KNOW WHETHER I SHOULD BE CALLING YOU THAT.
I'VE HANDED YOU PLAINTIFFS' EXHIBIT 1946. CAN YOU LOOK AT THAT FOR A MOMENT AND TELL US WHAT THAT IS.
A. (EXAMINING)
THIS IS THE FIRST THREE PAGES OF THE ACCREDITATION DOCUMENT.
Q. AND DOES THIS DOCUMENT LIST WHO IS IN THE ADMINISTRATION?
A. YES, IT DOES.

5195
Q. AND WHO IS ON THE BOARD OF EDUCATION?
A. YES, IT DOES.
Q. AND WHO IS THE HEAD OF ALL THE DIFFERENT DEPARTMENTS?
A. YES.
Q. AND DOES IT LIST THE CURRICULUM OF THE SCHOOL?
A. YES, IT DOES.
Q. AND THAT WOULD BE ON PAGE 2?
A. THAT WOULD BE UNDER "TABLE OF CONTENTS."
Q. AND ON PAGE 3, IS THAT THE ACCREDITATION CERTIFICATE OR INFORMATION?
A. JUST THE IDENTIFYING DATA THAT HAS THE DATE THAT IT WAS PREPARED.
MS. CHABER: OKAY. I'D MOVE THIS INTO EVIDENCE,

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YOUR HONOR.
MS. MASON: I HAVE NO OBJECTION, YOUR HONOR.
THE COURT: 1946 IS RECEIVED.
(DOCUMENT MORE PARTICULARLY LISTED IN THE INDEX RECEIVED IN EVIDENCE AS PLAINTIFFS' EXHIBIT # 1946)
MS. CHABER: Q. YOU LOOKED THROUGH THE LIST OF THE CLASSES THAT WERE TAUGHT?
A. YES, I DID.
Q. AND DID YOU SEE ANY CLASS THAT YOU WERE AWARE OF DURING THAT TIME PERIOD THAT TAUGHT THE HEALTH HAZARDS OF CIGARETTE SMOKING?
MR. ESCHER: OBJECTION, YOUR HONOR. HEARSAY.

5196
THE COURT: THE DOCUMENT IS IN EVIDENCE.
OVERRULED. THE DOCUMENT IS ALREADY IN EVIDENCE.
OVERRULED.
THE WITNESS: I HAD THOUGHT THAT THERE WAS A SMALL SEGMENT IN THE DRIVER EDUCATION COURSE WHERE CERTAIN STATE REQUIREMENTS WERE COVERED.
BUT IN LOOKING AT THE QUESTIONS -- THE ACCREDITATION QUESTIONS THAT WERE ADDRESSED REGARDING THAT COURSE, THERE WAS ABSOLUTELY NOTHING THAT REFERRED TO HEALTH AT ALL. IT WAS STRICTLY DRIVER EDUCATION.
MS. CHABER: Q. DID, AT SOME POINT LATER ON, THE DRIVERS' EDUCATION PROGRAM ADD A SEGMENT THAT DEALT WITH -- I THINK YOU SAID SEX EDUCATION AND SUBSTANCE --
MR. ESCHER: OBJECTION. LACK OF FOUNDATION,

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YOUR HONOR.
THE COURT: WELL, IF YOU CAN, WHY DON'T YOU LAY A FOUNDATION ON HER KNOWLEDGE ABOUT WHAT'S IN THE PROGRAM OR NOT.
IT MAY BE THAT SHE HAS SAID ENOUGH, BUT I'M NOT SURE WHETHER SHE IS FAMILIAR WITH THAT PARTICULAR PROGRAM. WHY DON'T YOU ASK HER.
I'LL SUSTAIN WITHOUT PREJUDICE.
MS. CHABER: SURE.
Q. WITHIN YOUR ROLE AS AN ADMINISTRATOR AT NORDHOFF HIGH SCHOOL, WERE YOU FAMILIAR WITH WHAT'S TAUGHT IN THE DRIVERS' EDUCATION PROGRAM?
A. CURRENT? WELL, AT THAT TIME --
THE COURT: NOT CURRENTLY. AT THAT TIME.

5197

MS. CHABER: Q. AT THAT TIME.
A. AT THAT TIME.
WAS I FAMILIAR WITH WHAT WAS TAUGHT?
Q. AT THAT TIME.
A. AT THAT TIME?
Q. THAT YOU WERE THERE. WERE YOU THEN FAMILIAR?
A. WELL, YES. I THOUGHT I WAS.
Q. AT SOME POINT SUBSEQUENT TO THAT TIME, DID DRIVERS' EDUCATION AT NORDHOFF HIGH SCHOOL INCLUDE A SEGMENT ON HEALTH AND SEX EDUCATION?
A. THE SEMESTER COURSE LATER WAS DIVIDED INTO TWO QUARTERS, ONE-QUARTER DRIVER EDUCATION AND ONE-QUARTER OF GENERAL STATE REQUIREMENTS.
BUT NOT AT THIS TIME.
Q. OKAY. SO IN 1974, THERE WAS NOT A SEGMENT, A

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QUARTER THAT DEALT WITH THESE GENERAL STATE REQUIREMENTS OF TEACHING HEALTH AND SEXUALITY AND SO FORTH?

A. THAT'S RIGHT.
Q. NOW, WAS NORDHOFF HIGH SCHOOL AT THAT TIME AN OPEN CAMPUS?
A. STUDENTS WERE ABLE TO LEAVE AT NOON, IF THEY HAD NO -- THEY COULD LEAVE AT NOON, YES. OPEN.
Q. THEY DIDN'T HAVE TO STAY THERE AT THEIR LUNCHTIME?
A. NO.
Q. AND DURING THE TIME PERIOD 1974 TO 1976, DID YOU EVER TALK ABOUT CANCER OR OTHER SERIOUS DISEASE FROM CIGARETTE SMOKING WITH LESLIE WHITELEY OR ANY OF THE OTHER

GIRLS THAT YOU DISCIPLINED WITH RESPECT TO SMOKING?
A. I DON'T THINK I WOULD HAVE. THAT'S ABOUT AS HONEST AS I CAN BE.
Q. OKAY. AND WHY DO YOU SAY YOU DON'T THINK YOU WOULD HAVE?
A. IT WASN'T SOMETHING THAT I WAS THAT AWARE OF AT THE TIME.
MS. CHABER: OKAY. THANK YOU.
THE COURT: OKAY. MS. MASON.
MS. MASON: THANK YOU, YOUR HONOR.

CROSS-EXAMINATION

BY MS. MASON: Q. HELLO, MS. ARCE.
A. YES. RIGHT. YES.
Q. HI. I'M LUCY MASON.

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YOU AND I HAVE NOT MET BEFORE?
A. THAT'S RIGHT.
Q. IT'S NICE TO MEET YOU, MA'AM.
ALTHOUGH YOU AND I HAVE NOT MET, A COUPLE OF PEOPLE ASSOCIATED WITH THE DEFENSE CAME AND INTERVIEWED YOU A FEW MONTHS AGO; ISN'T THAT RIGHT? DO YOU REMEMBER THAT?
A. I DON'T -- I REMEMBER SOMEBODY COMING LOOKING FOR RECORDS, AND SOMEONE -- ANOTHER PERSON CAME TO PHOTOCOPY OUR YEARBOOK FROM THAT PERIOD.
Q. YOU ACTUALLY HELPED US GET SOME OF THE YEARBOOKS AND THINGS; IS THAT RIGHT?
A. YES.
Q. DO YOU REMEMBER TALKING TO TWO GENTLEMEN EARLY ON

5199

FROM -- ASSOCIATED WITH THE DEFENSE?
A. TWO GENTLEMEN CAME INTO MY OFFICE, YES.
Q. AND MA'AM, DO YOU REMEMBER TELLING THEM THAT YOU --
MS. CHABER: OBJECTION. THIS IS HEARSAY.
THE COURT: WELL, YOU KNOW, THERE IS AN EXCEPTION TO THE HEARSAY RULE THAT MAY OR MAY NOT BE APPLICABLE HERE.
UNTIL I HEAR THE REST OF IT, I CAN'T RULE ON IT. IF YOU WANT TO HAVE A SIDEBAR ABOUT IT, WE CAN.
MS. CHABER: I THINK WE DO. I THINK IT RAISES ANOTHER ISSUE THAT I DON'T WANT TO ARGUE IN FRONT OF THE JURY.
THE COURT: LET'S HAVE A VERY, VERY QUICK SIDEBAR.

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(COURT AND COUNSEL CONFER OUTSIDE
THE PRESENCE OF THE JURY)
THE COURT: AFTER THAT SIDEBAR, MS. CHABER, DO I RULE ON THIS OR DO YOU WITHDRAW THE OBJECTION; WHICH?
MS. CHABER: I THINK WE'LL LET HER ANSWER. WE'LL LET HER FINISH THE QUESTION, AND THEN I WILL SEE IF I NEED TO --
THE COURT: YOU WITHDRAW THE OBJECTION. YOU ARE GOING TO WAIT UNTIL THE QUESTION IS ASKED AND THEN WE'LL SEE?
MS. CHABER: YES.
MS. MASON: Q. I WILL ASK YOU THE QUESTION AGAIN, MRS. ARCE.

5200

DO YOU REMEMBER TALKING TO THESE TWO GENTLEMEN?
A. YES.
Q. DO YOU REMEMBER TELLING THEM THAT YOU DID NOT HAVE A RECOLLECTION OF LESLIE WHITELEY?
A. NO, I DIDN'T TELL THEM THAT.
Q. DO YOU REMEMBER BEING SHOWN A PICTURE OF HER TO HELP REFRESH YOUR RECOLLECTION OF WHO SHE MIGHT HAVE BEEN?
A. WAS IT A PICTURE IN THE YEARBOOK?
Q. IT WAS PICTURE OF HER WHILE SHE WAS AT NORDHOFF HIGH SCHOOL, YES.
A. IF I WAS -- I KNOW -- I KNOW WHO LESLIE WHITTEKER -- THAT WAS HER NAME IN HIGH SCHOOL -- I KNOW WHO SHE IS. I KNEW WHO SHE WAS THEN.

Q. DO YOU REMEMBER NOT BEING ABLE TO RECALL HER WHEN PEOPLE FROM MY OFFICE CAME TO SPEAK WITH YOU?

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A. NO.
Q. DO YOU REMEMBER BEING SHOWN A PICTURE OF HER WHEN THEY CAME TO SPEAK WITH YOU?
A. THE MAN WHO CAME EARLIER, I SHOWED THE PICTURE TO HIM IN THE YEARBOOK.
Q. MRS. ARCE -- MS. ARCE OR MRS. ARCE?
A. YES.
Q. I DON'T WANT TO ADDRESS YOU INAPPROPRIATELY. I WANT YOU TO PRESUME THAT THERE HAVE BEEN TWO WITNESSES IN THIS COURTROOM WHO HAVE TESTIFIED THE STATE OF CALIFORNIA MANDATED THAT THE DANGERS OF SMOKING BE TAUGHT IN HIGH SCHOOL COURSES DURING THE TIME THAT MRS. WHITELEY WAS IN HIGH SCHOOL.

5201
YOU WERE AN ENGLISH TEACHER; IS THAT RIGHT?
A. ENGLISH AND SPANISH.
Q. IT WASN'T YOUR RESPONSIBILITY TO TEACH THE DANGERS OF SMOKING IN YOUR COURSES, WAS IT, MA'AM?
A. IT WAS NOT.
Q. AND THIS PLAINTIFFS' 1946, WE ONLY HAVE THREE PAGES. YOU DIDN'T ACTUALLY BRING THE PAGES OF THE CURRICULUM OF THE COURSES; IS THAT RIGHT?
A. IT WASN'T EXACTLY COMPLETE. THERE WERE QUESTIONS THAT HAD BEEN BROUGHT UP BY A PREVIOUS ACCREDITATION VISIT, AND THOSE QUESTIONS WERE ADDRESSED.
Q. AND YOU SAID YOU REVIEWED THE DRIVERS' ED SECTION?
A. YES.
Q. DID YOU ALSO REVIEW THE SCIENCE SECTION OF THIS DOCUMENT?

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A. I DID NOT.
Q. AND YOU KNOW MR. DEL GARST?
A. YES.
Q. IF HE CAME -- LET ME ASK IT THIS WAY: DO YOU KNOW WHETHER THE DANGERS OF SMOKING WERE REQUIRED TO BE TAUGHT IN THE SCIENCE COURSES AT NORDHOFF HIGH SCHOOL DURING THE TIME THAT LESLIE WHITELEY WAS THERE?
A. NO, THEY WERE NOT.
Q. HOW DO YOU KNOW THAT, MA'AM? DO YOU KNOW MR. DEL GARST; YOU DO; RIGHT?

A. YES.
Q. AND HE WAS THE SCIENCE TEACHER AT NORDHOFF HIGH

5202

SCHOOL BEFORE HE BECAME VICE PRINCIPAL, ALONG WITH YOU; IS THAT RIGHT?
A. THAT'S RIGHT.
Q. AND IF HE CAME HERE AND TOLD THIS JURY THAT HE TAUGHT LUNG CANCER, HEART DISEASE AND EMPHYSEMA BEING CAUSED BY SMOKING IN HIS SCIENCE COURSES, WOULD YOU HAVE ANY REASON TO DISAGREE WITH THAT?
MS. CHABER: I WOULD JUST OBJECT THAT THAT LACKS FOUNDATION AND MISSTATES THE TESTIMONY.
THE COURT: DO YOU OBJECT? IF YOU OBJECT TO THE FORM OF THE QUESTION, I'LL SUSTAIN.
IF THERE IS GOING TO BE REFERENCE TO A PRIOR WITNESS' TESTIMONY AND THERE IS A DISPUTE BETWEEN YOU ABOUT WHETHER IT'S ACCURATE OR NOT, RATHER THAN TRY TO RESOLVE THAT DISPUTE, I'M GOING TO ASK THE LAWYER TO FRAME THE QUESTION IN A DIFFERENT WAY, BECAUSE THE JURY IS THE ONE

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THAT'S GOING TO BE HANDLING THESE MATTERS, NOT THE COURT.
THESE ARE MATTERS OF FACT.
MS. MASON: Q. YOU DIDN'T TEACH THE SCIENCE
COURSES DURING ANY TIME THAT YOU WERE AT NORDHOFF HIGH
SCHOOL; ISN'T THAT RIGHT?
A. THAT'S RIGHT.
Q. AND THIS SMOKING AREA THAT YOU AND MS. CHABER
TALKED ABOUT BEING PROPOSED AT NORDHOFF HIGH SCHOOL --
A. YES.
Q. -- YOU WERE PART OF ADMINISTRATION AT THE TIME?
A. YES, I WAS.
Q. AND YOU KNEW DUANE OWENS AT THAT TIME AS WELL?

5203
A. YES.
Q. HE WAS THE PRINCIPAL, WASN'T HE, MA'AM?
A. YES, HE WAS.
Q. IT WAS MR. OWENS THAT OPPOSED THE SMOKING AREA,
WASN'T HE?
A. I'M NOT SURE, BECAUSE AT ONE POINT HE STATED, IF
THERE WAS A SMOKING AREA, THERE WOULD BE A CERTAIN PENALTY
FOR STUDENTS WHO SMOKED OUTSIDE OF THAT AREA.
SO THERE'S SOME AMBIVALENCE AS TO HOW HE FELT

ABOUT IT.
Q. LET ME ASK YOU THIS QUESTION: IS IT YOUR
TESTIMONY THAT THE DANGERS OF SMOKING WERE NOT TAUGHT AT
NORDHOFF HIGH SCHOOL DURING THE TIME THAT LESLIE WHITELEY
WAS THERE?
A. I THINK, AT THAT TIME, SMOKING, THE DANGER OF
SMOKING WAS OF -- RELATED TO EMPHYSEMA, IF ANYTHING.

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Q. MY QUESTION WAS SLIGHTLY DIFFERENT THOUGH, MA'AM.
A. OKAY.
Q. IS IT YOUR TESTIMONY THAT THE DANGERS OF SMOKING WERE NOT TAUGHT AT NORDHOFF HIGH SCHOOL DURING THE 1970S?
A. I'M SURE THAT SOME TEACHERS DID, AS MR. GARST ADDED THAT TO THEIR CURRICULUM, THE DANGER OF SMOKING.
Q. ALL RIGHT. LET ME -- MA'AM, WHAT IS THE NORDHOFF HIGH SCHOOL RANGER?
A. THE SCHOOL NEWSPAPER.
Q. AND THE OJAI VALLEY NEWS IS THE LOCAL NEWSPAPER?
A. YES.

5204

Q. LET ME HAND YOU A COUPLE OF DOCUMENTS WHICH ARE ALREADY IN EVIDENCE, 4679-A AND 4685.
WHY DON'T WE LOOK AT 4679-A FIRST.
MS. CHABER: JUST SHOW US WHICH ONES THEY ARE.
MS. MASON: IT'S THE RANGER NEWSPAPER.
(ATTORNEYS CONFER)
MS. MASON: Q. MA'AM, WILL YOU TURN WITH ME TO PAGE 12.
SEE THE TITLE OF THAT ARTICLE "SMOKING AREA, GOOD OR BAD"?
A. YES.
Q. AND WILL YOU TURN WITH ME TO THE SECOND PAGE OF THAT. I'M SORRY TO MAKE YOU JUMP AROUND. I SHOULD HAVE DONE THIS FIRST. THE SECOND PAGE OF THE DOCUMENT.
DOES IT LIST LESLIE WHITTEKER THERE AS BEING PART OF THE STAFF OF THIS NEWSPAPER? DO YOU SEE WHERE IT SAYS "EXCHANGE EDITOR"?

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A. YES.
Q. "LESLIE WHITTEKER"?
A. YES.
Q. WILL YOU TURN BACK WITH ME TO PAGE 12, PLEASE.
AND THIS NEWSPAPER WAS AVAILABLE TO ALL OF STUDENTS AT THE NORDHOFF HIGH SCHOOL, WASN'T IT?
A. YES.
Q. YOU READ IT WHILE YOU WERE THERE, MA'AM; IS THAT RIGHT?
A. I TRIED TO READ IT REGULARLY.
Q. AND MR. OWENS IS QUOTED IN THE ARTICLE, IS HE

5205

NOT?
A. YES.
Q. AND HE SAYS TO STUDENTS WHO ARE READING THIS NEWSPAPER THAT HE COULDN'T UNDERSTAND WHY THERE SHOULD BE SMOKING SINCE THE EVIDENCE -- SINCE THERE HAS BEEN SO MUCH SCIENTIFIC EVIDENCE ABOUT THE EFFECTS OF SMOKING? DO YOU SEE THAT?
A. YES.
Q. ALL RIGHT. DOES THAT HELP REFRESH YOUR RECOLLECTION ABOUT WHERE MR. OWENS STOOD ON THE ISSUE OF THE SMOKING AREA?
A. I KNOW MR. OWENS WAS AGAINST SMOKING. MR. OWENS IS A MORMON AND HE HAS NEVER SMOKED, AND HE DOES NOT CONDONE SMOKING.
Q. AND HE TAUGHT THAT TO THE STUDENTS AT NORDHOFF HIGH SCHOOL? DIDN'T HE MAKE IT PART OF THE ADMINISTRATION POLICY THERE?

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A. IT WAS A PART OF THE ADMINISTRATION POLICY BY STATE LAW.
Q. AND MR. OWENS --
A. HE MADE A STATEMENT HERE SAYING -- EXPRESSING HIS FEELINGS, YES, THAT HE WAS AGAINST SMOKING ON CAMPUS.
Q. MA'AM, WILL YOU TURN WITH ME -- I LOST THE EXHIBIT NUMBER -- TO THE NEXT ONE, 4685. THAT'S IN EVIDENCE AS WELL.
IT'S A NEWSPAPER ARTICLE FROM THE OJAI VALLEY NEWS; IS THAT RIGHT?
A. YES.

5206
Q. OKAY. MR. OWENS IS QUOTED THERE AS WELL, ISN'T HE?
A. (EXAMINING)
Q. ABOUT THE FOURTH PARAGRAPH DOWN.
A. YES.

Q. AND THIS IS ENTITLED, "NO SMOKING ASKED FOR NORDHOFF"; IS THAT RIGHT?
A. YES.
Q. AND YOU MAY WANT TO TAKE THE TIME TO LOOK AT IT. THIS IS AN ARTICLE ABOUT WHETHER THERE SHOULD BE A SMOKING LOUNGE AT NORDHOFF; IS THAT RIGHT?
A. A SMOKING AREA OUTSIDE. OUTSIDE.
Q. THANK YOU. A SMOKING AREA. I MADE THAT MISTAKE LAST TIME.
THAT'S WHAT THIS ARTICLE IS ABOUT?
A. THAT'S RIGHT.
Q. AND MR. OWENS IS QUOTED THERE AS SAYING IT WOULD

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BE INCONSISTENT WITH RECOMMENDING A SMOKING AREA BECAUSE IT'S THE SCHOOL'S RESPONSIBILITY TO TEACH ABOUT THE ILL EFFECTS OF TOBACCO.
DO YOU SEE THAT?
A. "TOBACCO, ALCOHOL AND NARCOTICS," YES.
Q. "WE CAN'T RECOMMEND A POLICY THAT COULD POSSIBLY CONTRIBUTE TO THE ILL HEALTH OF STUDENTS."
DO YOU SEE THAT AS WELL?
A. YES.
Q. DOES THAT IN ANY WAY REFRESH YOUR RECOLLECTION ABOUT WHETHER THE DANGERS OF SMOKING WERE TAUGHT AT NORDHOFF

5207

HIGH SCHOOL IN THE 1970S?
A. I DON'T THINK THAT RELATES TO WHETHER THE DANGERS OF SMOKING WERE TAUGHT. THIS IS AN OPINION.
Q. DOESN'T HE SAY IN THE PARAGRAPH BEFORE, MA'AM, THAT THE SCHOOL HAD THE RESPONSIBILITY DURING THIS TIME PERIOD TO TEACH THE ILL EFFECTS OF TOBACCO?
A. YES, HE SAID THAT.
Q. ALL RIGHT. IS THE DATE OF THE ARTICLE ON THERE FOR YOU TO FIND, MRS. ARCE?
A. FEBRUARY 29TH, 1976.
Q. AND MRS. WHITELEY, THEN WHITTEKER, GRADUATED IN 1976; IS THAT RIGHT?
A. YES.
Q. OKAY. MRS. ARCE, IS IT YOUR RECOLLECTION THAT THE GENERAL STATE REQUIREMENT YOU HAVE BEEN TALKING ABOUT WAS ACTUALLY PUT INTO EFFECT IN 1980 TO BE PART OF THE DRIVERS' ED COURSE?
A. I COULDN'T STATE THAT FOR SURE.

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Q. MR. GARST HAD THE SAME JOB RESPONSIBILITIES AS YOU DID DURING THE TIME YOU WERE AT NORDHOFF HIGH SCHOOL; ISN'T THAT RIGHT? HE WAS FOR BOYS, YOU WERE FOR GIRLS?
A. IN DISCIPLINARY AREAS, YES, WE DID THE SAME JOB.
Q. AND HE EVENTUALLY WENT BACK TO TEACHING THE SCIENCE COURSES; ISN'T THAT TRUE?
A. YES, HE DID. WELL, AND DRIVERS' EDUCATION.
Q. IN FACT, HE WENT BACK -- HE STARTED TEACHING DRIVERS' EDUCATION WHEN HE WENT BACK TO TEACHING IN THE EARLY 1980S; ISN'T THAT RIGHT?

5208

A. I'M NOT SURE IF HE HAD TAUGHT IT BEFORE. MAYBE THAT'S WHEN HE BEGAN. I DON'T KNOW.
Q. BUT YOU WOULD DEFER TO HIS TESTIMONY ON THAT, WOULDN'T YOU, MA'AM?
A. ON WHEN -- ON THE FACT THAT HE TAUGHT DRIVERS' EDUCATION? YES.
Q. AND MRS. ARCE, WHEN YOU TESTIFIED EARLIER THAT WHEN YOU WERE -- IF YOU SUSPENDED A STUDENT FOR SMOKING, THERE ARE VARIOUS THINGS YOU MIGHT HAVE SAID TO THE STUDENTS, INCLUDING "IT'S NOT GOOD FOR -- SMOKING IS NOT GOOD FOR YOU"? THAT WAS YOUR TESTIMONY; IS THAT RIGHT?
A. THAT WOULD PROBABLY HAVE BEEN SOMETHING THAT I MIGHT HAVE SAID, YES.
Q. AND YOU DON'T KNOW, DO YOU, MRS. ARCE, WHETHER A SLIDE OF A DISEASED LUNG OF A SMOKER AND A HEALTHY LUNG OF A NONSMOKER WERE SHOWN TO STUDENTS AT NORDHOFF HIGH SCHOOL IN COURSES IN THE 1970S; IS THAT RIGHT?
A. NOT IN COURSES, NO.

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THEY WOULD NOT. AS FAR AS I KNOW, THEY WOULD NOT HAVE BEEN SHOWN IN COURSES IN THE 1970S.

Q. IF A TEACHER SHOWED A SLIDE IN STUDENT -- LET ME ASK IT THIS WAY, MRS. ARCE? YOU DIDN'T ATTEND OR MONITOR OR OBSERVE THE SCIENCE COURSES AT NORDHOFF HIGH SCHOOL IN THE 1970S, DID YOU?

A. IN THE LATER -- PROBABLY THE LATER PART OF THE 70S, YES.

Q. DID YOU IN 1974 OR 1975?

A. I DON'T THINK SO, NO.

5209

Q. SO IF A TEACHER WOULD HAVE TAUGHT THE DANGERS OF SMOKING THEN OR WOULD HAVE SHOWN A PICTURE OF A DISEASED LUNG, YOU WOULD HAVE NO WAY OF KNOWING THAT ONE WAY OR ANOTHER; IS THAT RIGHT?

A. I KNOW MR. GARST SOMETIMES USED A PICTURE OF A DISEASED LUNG WHEN HE TALKED TO BOYS THAT HE HAD SUSPENDED.

Q. MY QUESTION WAS SLIGHTLY DIFFERENT THAN THAT.

A. I KNOW --

Q. I'LL ASK IT AGAIN.

A. OKAY.

Q. THE QUESTION WAS WHETHER A TEACHER TEACHING SCIENCE COURSES AT NORDHOFF HIGH SCHOOL IN '74 AND '75, WHETHER THAT TEACHER TAUGHT ABOUT THE DANGERS OF SMOKING OR SHOWED A DISEASED LUNG ISN'T SOMETHING YOU WOULD KNOW ONE WAY OR ANOTHER; ISN'T THAT RIGHT?

A. I MIGHT HAVE KNOWN. I DON'T RECALL NOW, BUT IT MIGHT -- IT MIGHT HAVE BEEN SOMETHING THAT I WOULD HAVE BEEN AWARE OF AT THE TIME.

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Q. BUT AS YOU SIT HERE TODAY TESTIFYING TO THE JURY, YOU DON'T KNOW; ISN'T THAT RIGHT?
A. I DON'T KNOW.
MS. MASON: THANK YOU, MS. ARCE. THAT'S ALL I HAVE.
THE COURT: ANYTHING FURTHER FOR MS. ARCE?
MS. CHABER: YES. JUST A COUPLE OF QUESTIONS.

REDIRECT EXAMINATION

BY MS. CHABER: Q. WHEN YOU -- IN RESPONSE TO

5210

COUNSEL'S QUESTIONS, WHEN YOU SAID YOU MIGHT HAVE TAUGHT THEM ABOUT THAT SMOKING WAS BAD, WHAT DID THAT MEAN? WHAT'S THE KIND OF THING YOU WOULD SAY?
A. WELL, I DON'T KNOW THAT I SAID MUCH OF ANYTHING ABOUT IT, BUT I MIGHT HAVE SAID SOMETHING ABOUT EMPHYSEMA, SINCE THAT WAS THE KIND OF ILLNESS THAT I HAD HAD SOME FAMILY EXPERIENCE WITH.
BUT I WOULDN'T HAVE SPOKEN ABOUT CANCER DIRECTLY. BUT I MIGHT HAVE SAID, YOU KNOW, "YOU MIGHT BE WINDED. YOU MIGHT NOT BE ABLE TO PARTICIPATE IN SPORTS. YOU MIGHT -- THERE MIGHT BE SOME ISSUES THAT COME UP AS A RESULT OF SMOKING."
Q. AND DURING THE TIME PERIOD THAT MR. GARST -- FIRST OF ALL, HE BECAME THE DEAN OF BOYS IN '74, THE SAME TIME YOU BECAME DEAN OF GIRLS?
A. NO. HE WAS THERE FOR A YEAR AND A HALF BEFORE ME.
Q. AND SO WHEN HE TAUGHT SCIENCE, WAS IT SEVERAL

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YEARS BEFORE LESLIE WHITTEKER WOULD HAVE BEEN IN SCHOOL?
A. WELL, HE TAUGHT BEFORE AND AFTER, YES.
Q. OKAY. AND THE AFTER WAS ALSO THE DRIVERS' EDUCATION?
A. YES. UH-HUH.
Q. AND WHEN YOU TALKED ABOUT THE DRIVERS' EDUCATION, ABOUT HOW LONG A TIME PERIOD AND HOW MANY TOPICS WOULD HAVE TO BE COVERED DURING THAT TIME PERIOD ON EVERYTHING BUT THE DRIVING PART?
A. THERE WERE A LOT OF TOPICS.

5211

Q. CAN YOU GIVE US IDEA OF HOW MANY?
A. FIRST AID, HUMAN SEXUALITY, ALCOHOL, TOBACCO, DRUGS, CAREERS.
I CAN'T REMEMBER HOW MANY OTHERS, BUT THERE WAS A LOT OF INFORMATION.
Q. AND HOW MANY WEEKS?
A. YOU MEAN THE '80S?
Q. YES.
A. IT WAS A NINE-WEEK COURSE.
Q. A NINE-WEEK COURSE.
AND ALL OF THOSE TOPICS WOULD BE COVERED IN THOSE NINE WEEKS?
A. DOMESTIC VIOLENCE, DATE RAPE, OTHER -- AS THINGS BECAME MORE OF A CONCERN, THEY WERE PUT INTO THAT PARTICULAR COURSE.
MS. CHABER: OKAY. AND I'D LIKE TO HAVE THIS MARKED AS PLAINTIFFS' NEXT IN ORDER.
THE CLERK: PLAINTIFFS' EXHIBIT 1947.
(DOCUMENT MORE PARTICULARLY

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LISTED IN THE INDEX MARKED
FOR IDENTIFICATION PLAINTIFFS'
EXHIBIT # 1947)
MS. CHABER: HERE IS YOUR HOLE-PUNCHED COPY, YOUR HONOR.
THE COURT: THANKS.
MS. CHABER: Q. I'M HANDING YOU PLAINTIFFS' 1947. THAT'S THE OJAI VALLEY NEWS FROM FEBRUARY 18TH, 1976.

5212
A. (EXAMINING)
Q. DOES THAT RELATE TO THIS ARTICLE ON THE SAME ISSUES WE WERE TALKING ABOUT?
MR. ESCHER: OBJECTION, YOUR HONOR. IT HASN'T BEEN OFFERED INTO EVIDENCE AND --
THE COURT: YOU DON'T NEED TO SAY MUCH MORE.
SUSTAINED.
MS. CHABER: I WILL MOVE IT INTO EVIDENCE.
THE COURT: SHE IS MOVING IT INTO EVIDENCE.
DO YOU OBJECT?
MR. ESCHER: YES, YOUR HONOR.
THE COURT: SUSTAINED.
MS. CHABER: Q. WHO IS KEN WADE?
A. HE WAS THE SUPERINTENDENT OF SCHOOLS AT THE TIME.
Q. AND --
THE COURT: YOU NEED TO PUT THE ARTICLE AWAY. IT'S NOT IN EVIDENCE, AND YOU'RE NOT REFER TO IT UNLESS COUNSEL ASKS YOU TO.
THESE QUESTIONS ARE NOT BEING ASKED IN

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RELATIONSHIP TO THAT ARTICLE RIGHT NOW.
THE WITNESS: OKAY.
THE COURT: IF COUNSEL ASKS YOU TO LOOK AT IT, WE'LL DEAL WITH IT WHEN AND IF IT HAPPENS. I JUST SUSTAINED AN OBJECTION TO IT.
MS. CHABER: Q. WHEN I ASKED YOU WHO KEN WADE WAS, DID YOU NEED TO REFER TO THIS ARTICLE TO KNOW THE ANSWER?
A. NO.

5213
Q. YOU WEREN'T READING THAT OFF OF THIS ARTICLE, WERE YOU? YOU KNOW WHO KEN WADE IS?
THE COURT: LET ME JUST SAY, THE REASON I SAID THAT, FOR THE RECORD, IS BECAUSE I NOTICED THAT WHILE THE WITNESS WAS ANSWERING THE QUESTION, SHE WAS READING THE ARTICLE AT THE SAME TIME.
I DON'T KNOW WHETHER SHE WAS READING IT IN REFERENCE TO A QUESTION OR NOT. THAT'S WAS THE REASON I SAID THAT.
MS. CHABER: AND THAT'S WHY I WANTED IT CLEARED UP, THAT SHE WASN'T, IN TERMS OF THE QUESTION THAT HAD BEEN ASKED.
THE COURT: NO PROBLEM.
MS. CHABER: SO THAT'S WHERE WE ARE. THE SAME PLACE, I THINK, YOUR HONOR.
Q. WERE YOU FAMILIAR WITH WHAT MR. WADE'S EXPRESSIONS OF OPINION WERE ABOUT WHETHER THERE SHOULD BE A SMOKING AREA FORMALIZED AT NORDHOFF HIGH?
MR. ESCHER: OBJECTION, YOUR HONOR. IT SOUNDS

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LIKE IT'S GOING TO CALL FOR HEARSAY AGAIN.
THE COURT: WELL, IF THE ANSWER IS NO, YOU DON'T NEED TO WORRY ABOUT IT. IF THE ANSWER IS YES, WE'LL WAIT AND SEE WHAT THE NEXT QUESTION IS.
THIS IS JUST A QUESTION. WERE YOU FAMILIAR WITH ANY EXPRESSION THAT HE GAVE ON THAT SUBJECT, YES OR NO?
THE WITNESS: YES.
MS. CHABER: Q. AND YOU YOURSELF, DID YOU HAVE DISCUSSIONS AND INVOLVEMENT WITH MR. WADE ON THIS ISSUE?

5214

A. YES.
Q. AND WERE ALL OF THE PEOPLE THAT WERE INVOLVED IN MAKING THE DECISION NOT TO HAVE THE SMOKING AREA FORMALIZED IN FAVOR OF NOT HAVING THE SMOKING AREA?
MR. ESCHER: OBJECTION, YOUR HONOR. HEARSAY.
THE COURT: SUSTAINED.
MS. CHABER: Q. WAS THERE A VOTE TAKEN AT SOME POINT?
A. THE SCHOOL BOARD VOTED.
Q. WERE YOU PRESENT AT THAT MEETING?
A. NO.
Q. IN TERMS OF YOUR ROLE AS DEAN OF GIRLS, IF YOU SAW A GIRL SMOKING OFF CAMPUS THAT WAS ONE OF YOUR STUDENTS, WOULD YOU STOP HER AND TALK TO HER ABOUT SMOKING?
A. IT DEPENDED HOW FAR OFF CAMPUS IT WAS.
WE HAVE RESPONSIBILITY FOR THE ADJACENT AREAS.
Q. THAT WOULD HAVE BEEN CONSIDERED BASICALLY SORT OF BEING ON SCHOOL GROUNDS?
A. RIGHT. IF I HAD SEEN A STUDENT DOWNTOWN OR SOMEWHERE ELSE, I WOULD NOT HAVE STOPPED AND TALKED TO HER.

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Q. OKAY. DURING THE TIME PERIOD THAT YOU WERE DEAN OF GIRLS AND MR. GARST WAS DEAN OF BOYS, DID YOU EVER BRING ANY OF YOUR GIRLS THAT YOU WERE DISCIPLINING FOR SMOKING CIGARETTES IN TO SEE ANY PICTURES OR AIDS THAT MR. GARST MAY HAVE USED?

A. NO.

Q. WOULD THAT HAVE BEEN SOMETHING THAT YOU DID IN TERMS OF YOUR DISCIPLINE?

5215

A. WOULD I HAVE TAKEN THEM TO SEE MR. GARST OR TO SEE HIS LUNG SLIDE?

Q. RIGHT.

A. NO.

Q. AND IN TERMS OF THE CLASSES THAT WERE BEING TAUGHT AT THE TIME, AS DEAN OF GIRLS, DID YOU GO INTO THE CLASSES?

A. MANY OF THEM, YES.

Q. AND DID YOU HAVE DISCUSSIONS WITH THE TEACHERS IN THE TEACHERS' ROOMS ABOUT WHAT THEY WERE TEACHING?

A. YES.

Q. AND WOULD YOU BE GENERALLY AWARE OF WHAT WAS BEING TAUGHT IN THE VARIOUS CLASSES?

A. GENERALLY, YES.

Q. AND OTHER THAN MR. -- WELL, MR. GARST WAS NOT A TEACHER AT THE TIME THAT LESLIE WHITTEKER WAS IN SCHOOL; RIGHT?

A. THAT'S RIGHT.

Q. ARE YOU AWARE OF ANY TEACHERS WHO WERE TEACHING WITHIN THEIR CLASSES ABOUT THE HEALTH HAZARDS OF CIGARETTE

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SMOKING?
MR. ESCHER: OBJECTION. HEARSAY, YOUR HONOR.
LACK OF FOUNDATION.
THE COURT: LACK OF FOUNDATION?
MS. CHABER: AWARE.
THE COURT: THE ISSUE IS WHETHER -- I'LL ALLOW
IT. THIS IS A QUESTION OF HER AWARENESS.
WELL, I GUESS THE QUESTION IS: DID SHE ATTEND

5216
THE CLASSES? SO IF SHE WOULD KNOW -- I GUESS THE FIRST
QUESTION IS: DID SHE ATTEND ANY OF THE CLASSES?
MS. CHABER: I ALREADY ASKED THAT, AND THE
ANSWER WAS YES.
THE COURT: ALL RIGHT. THEN, WITH RESPECT TO
THE CLASSES THAT SHE ATTEND, DID SHE EVER HEAR THAT BEING

TAUGHT? IF THAT'S THE QUESTION, THAT'S FINE, IF SHE WAS
THERE.
FOR THE TIME SHE WAS THERE; THAT'S THE QUESTION?
MS. CHABER: THAT'S FINE.
THE COURT: THAT'S ALL SHE CAN TELL US ABOUT IN
TERMS OF HER ACTUAL KNOWLEDGE, I SUPPOSE. OTHERWISE, IT
WILL BE HEARSAY.
MS. CHABER: OKAY.
Q. DURING ANY CLASS THAT YOU ATTENDED, DID YOU HEAR
ANYONE TEACHING ABOUT THE HEALTH HAZARDS OF CIGARETTE
SMOKING?
A. NO.
Q. WERE THERE SCHOOL ASSEMBLIES OTHER THAN THE FIRST
ASSEMBLY OF THE YEAR?

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A. YES.
Q. DID ATTEND THE SCHOOL ASSEMBLIES?
A. YES.
Q. DID YOU EVER HEAR ANY SCHOOL ASSEMBLY THAT ADDRESSED HEALTH HAZARDS OF CIGARETTE SMOKING?
A. NO.
MS. CHABER: AND, YOUR HONOR, IN TERMS OF DOCUMENT NO. -- I ALWAYS FORGET THE NUMBER -- 1947, I OFFER

5217

THAT DOCUMENT NOT FOR THE TRUTH OF THE MATTER ASSERTED IN THE DOCUMENT BUT RATHER AS EVIDENCE OF DISCUSSION TAKING PLACE.
MR. ESCHER: IT'S STILL HEARSAY, YOUR HONOR.
THE COURT: SUSTAINED.
MS. CHABER: Q. WHEN WAS THE FIRST TIME THAT YOU BECAME AWARE THAT CIGARETTE SMOKING CAUSING LUNG CANCER WAS BEING TAUGHT AT NORDHOFF HIGH?
A. I'M NOT -- I WOULD SAY DEFINITELY WHEN MR. GARST BEGAN TO TEACH THAT COURSE.
Q. THAT COURSE BEING DRIVERS' --
A. THE DRIVERS' ED, THE GENERAL STATE REQUIREMENT COURSE.
Q. AND THAT, AS FAR AS YOU RECALL, IS IN THE 1980S?
A. I SAID IT WAS 1980.
Q. OKAY. AND THAT WAS SEVERAL YEARS AFTER LESLIE WHITTEKER HAD GRADUATED?
A. YES.
Q. AND OTHER THAN THE CATCHING OF LESLIE WHITTEKER SMOKING IN THE GIRLS' BATHROOM ON THAT FIRST OCCASION, WAS

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LESLIE A GIRL THAT YOU HAD TO DISCIPLINE ON OTHER OCCASIONS?
A. NO.
MS. CHABER: THANK YOU. NOTHING FURTHER.
THE COURT: OKAY. MAY MS. ARCE BE EXCUSED?
MS. MASON: I JUST HAVE ONE QUESTION, YOUR HONOR.
THE COURT: ONE QUESTION.
MS. MASON: HOPEFULLY, IT WON'T LEAD TO A

5218

SECOND.
THE COURT: I'M GOING TO TAKE YOU AT YOUR WORD.

RECROSS-EXAMINATION

BY MS. MASON: Q. MRS. ARCE, I'M JUST CONFUSED. I JUST WANT TO MAKE SURE I UNDERSTAND YOU.
ARE YOU TESTIFYING THAT NORDHOFF HIGH SCHOOL DIDN'T COMPLY WITH THE REQUIREMENT THAT THE DANGERS OF SMOKING BE TAUGHT IN ITS COURSES?
A. I CAN'T FIND ANY -- I THOUGHT THERE WAS INFORMATION BEING TAUGHT, BUT I CANNOT FIND ANY EVIDENCE OF IT.
Q. ARE YOU AWARE THAT SINCE 1913, THERE HAS BEEN A STATE LAW ON THE BOOKS IN CALIFORNIA REQUIRING THAT THE ILL EFFECTS OF TOBACCO BE TAUGHT IN THE COURSES IN THE CALIFORNIA SCHOOLS?
A. I DIDN'T KNOW THE EXACT DATE, BUT I DO KNOW THAT THERE IS -- THERE HAS ALWAYS BEEN SOME SUBSTANCE ABUSE ISSUE THAT HAS BEEN TAUGHT IN THE SCHOOL, YES.
MS. MASON: THANK YOU.
THE COURT: ANYTHING FURTHER?

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MS. CHABER: NO, YOUR HONOR.
THE COURT: MAY MS. ARCE BE EXCUSED?
MS. CHABER: YES.
THE COURT: MS. MASON?
MS. MASON: YES.
THE COURT: YOU ARE EXCUSED.
THE WITNESS: THANK YOU.

5219

(WITNESS EXCUSED)
THE COURT: THOSE PAPERS, YOU NEED TO LEAVE HERE.
COUNSEL, IF WE TAKE A NORMAL 20-MINUTE RECESS, ARE WE GOING TO FINISH THE EVIDENCE TODAY?
MR. HARDY: NO, YOUR HONOR.
THE COURT: THAT'S NOT GOOD NEWS.
MR. HARDY: YOU ASKED.
MR. BROWN: IT'S YOUR FAULT, JUDGE. YOU ASKED.
MR. HARDY: WE ARE GOING TO COME CLOSE.
THE COURT: I DON'T WANT TO ASK THE JURY TO COME IN HERE ON MONDAY FOR A FEW MINUTES. LET ME ASK -- IF YOU ARE GOING TO BE A FEW MINUTES AFTER 5:00, I MAY ASK THE JURORS IF THEY CAN STAY TODAY RATHER THAN COME IN FOR A VERY SHORT SEGMENT ON MONDAY.
MR. HARDY: WE HAVE ONE DEPOSITION TO READ, WHICH I ESTIMATE WILL TAKE APPROXIMATELY AN HOUR. THAT'S JUST AN ESTIMATE.
AND ANOTHER TWO OR THREE MINUTES OF EVIDENCE, BUT MR. ROSSE HAS A WITNESS. AND WE ARE WILLING TO LET HIM GO OUT OF TURN TO ACCOMMODATE THE WITNESS.

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THE COURT: HOW LONG WILL THE WITNESS TAKE? DOES ANYBODY HAVE AN IDEA, ROUGHLY, FOR EXAMINATION BY EVERYBODY?

ARE YOU ABLE TO ESTIMATE THIS? THE REASON I'M DOING THIS IN FRONT OF THE JURY IS THAT IF THERE'S SOME WAY TO FINISH AT 5:15 OR 5:20 OR SOMETHING TODAY, I ASSUME THEY WOULD PREFER TO DO THAT.

5220

MR. ROSSE: LESS THAN A HOUR IS PROBABLY OPTIMISTIC.

MR. BROWN: 20 MINUTES.

MR. ROSSE: IT COULD PROBABLY BE 20, 30 MINUTES. WE ARE GOING TO BE CLOSE TO AN HOUR RIGHT THERE.

I COULD PROBABLY DO IT IN 20, 30 MINUTES.

THE COURT: JURORS, LET'S TAKE A 20-MINUTE RECESS TILL FIVE MINUTES TO 4:00.

PLEASE CONTINUE TO FOLLOW THE ADMONITION. WE'LL SEE YOU BACK AT FIVE TO 4:00.

(RECESS TAKEN FROM 3:35 TO 3:58 P.M.)

THE COURT: OKAY. WE ARE BACK ON THE RECORD.

JURORS, I SEE YOU HAVE ALREADY TAKEN YOUR VOTE AND IT SEEMS TO BE A UNANIMOUS VERDICT. I HAVE YOUR NOTE THAT YOU'D RATHER COME ON MONDAY MORNING THAN STAY LATE TONIGHT.

WHAT I WILL DO, LET'S GO UNTIL 5:00 O'CLOCK. I WILL THEN ASK THE LAWYERS HOW MUCH TIME IS LEFT, AND THEN I WILL ASK YOU WHETHER YOUR PREFERENCE WOULD BE TO LEAVE, IF ANYBODY WANTS TO LEAVE. THEN WE'LL RECESS AT 5:00 O'CLOCK. SO LET'S SEE WHERE WE ARE.

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OKAY. AND SO THE LIKELIHOOD IS THAT WE'LL DO WHAT YOU SUGGEST, HAVE YOU IN FOR A FEW MINUTES ON MONDAY. LET'S GET GOING AND SEE WHERE WE ARE.

WHAT'S THE NEXT ORDER OF BUSINESS?

MR. ROSSE: METALCLAD WOULD LIKE TO CALL DR. DANIEL CHER.

THE COURT: OKAY.

5221

LET ME SAY ONE THING TO ALL COUNSEL. I WANT THE RECORD TO BE CLEAR ON THIS. I DO WANT YOU ALL TO HAVE A FULL OPPORTUNITY TO PRESENT ALL OF THE EVIDENCE THAT YOU WANT, AND THE JURY IS WILLING TO COME IN ON MONDAY MORNING, SO DON'T SHORT-CHANGE YOURSELVES.

I THINK IT'S MORE IMPORTANT THAT EVERYBODY GETS A FULL AND FAIR OPPORTUNITY TO PUT ON ALL THEIR EVIDENCE THAN IT IS TO WORRY SO MUCH ABOUT THE CLOCK.

I DON'T WANT ANYBODY TO FEEL UNDER PRESSURE. LET'S TAKE IT THE WAY YOU WOULD NORMALLY TAKE IT. OKAY.

TESTIMONY OF

DANIEL CHER, M.D.,

A WITNESS CALLED ON BEHALF OF THE DEFENSE, HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

THE CLERK: PLEASE STATE YOUR NAME.

THE WITNESS: DANIEL CHER, C-H-E-R.

THE CLERK: THANK YOU. PLEASE TAKE THE STAND.

THE COURT: OKAY. MR. ROSSE, YOU MAY PROCEED.

MR. ROSSE: THANK YOU.

DIRECT EXAMINATION

BY MR. ROSSE: Q. COULD YOU INTRODUCE YOURSELF

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TO THE JURY.
A. MY NAME IS DANIEL CHER. I'M A PHYSICIAN IN INTERNAL MEDICINE.
Q. I THINK YOU HEARD HIS HONOR TALKING ABOUT OUR TIME SITUATION. WE ARE GOING TO TRY TO CUT THROUGH THIS QUICKLY, WITHOUT GOING TOO FAST.

5222

I'D LIKE TO REMIND YOU TO TALK SOMEWHAT SLOWLY. WAIT UNTIL I FINISH MY QUESTIONS BEFORE YOU GIVE AN ANSWER. I'LL TRY TO NOT GIVE YOU ANOTHER QUESTION BEFORE YOU FINISH YOUR ANSWER.
YOU ARE A MEDICAL DOCTOR?
A. THAT'S CORRECT.
Q. COULD YOU BRIEFLY TELL THE JURY WHAT YOUR EDUCATIONAL BACKGROUND IS.
A. I WENT TO COLLEGE AT STANFORD UNIVERSITY. I THEN WENT TO MEDICAL SCHOOL AT YALE UNIVERSITY IN CONNECTICUT.
AFTER MEDICAL SCHOOL, I DID ONE YEAR TRAINING IN -- I DID ONE YEAR OF BASIC RESEARCH IN CELL BIOLOGY. I THEN DID A ONE-YEAR INTERNSHIP IN INTERNAL MEDICINE AT UNIVERSITY OF WISCONSIN IN MADISON.
I THEN DID TWO MORE YEARS OF TRAINING IN INTERNAL MEDICINE HERE IN SAN FRANCISCO, JUST UP THE STREET AT CALIFORNIA PACIFIC MEDICAL CENTER. TWO YEARS OF TRAINING IN INTERNAL MEDICINE.
I PRACTICED HERE IN SAN FRANCISCO AT THAT HOSPITAL FOR ONE YEAR. THEREAFTER, I THEN WENT IN 1995 TO STANFORD UNIVERSITY TO DO A FELLOWSHIP IN GENERAL INTERNAL MEDICINE. THAT IS A FIELD OF RESEARCH IN INTERNAL MEDICINE.

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DURING THAT TIME, ABOUT 20 PERCENT OF MY TIME WAS TAKING CARE OF PATIENTS AT THE PALO ALTO VA HOSPITAL.

AFTER THAT FELLOWSHIP, I STARTED THE JOB WHERE I CURRENTLY WORK.

Q. DO YOU CURRENTLY STILL SEE PATIENTS AS PART OF

5223

YOUR JOB?

A. I WAS SEEING PATIENTS HALF DAY A WEEK UP UNTIL DECEMBER, WHEN I HAD THE INTERESTING OPPORTUNITY TO SERVE AS A JUROR IN A VERY LONG TRIAL IN SAN JOSE.

THAT'S DONE NOW, AND I HAVE NOT RESUMED CLINICAL PRACTICE YET.

Q. ARE YOU PLANNING ON RESUMING CLINICAL PRACTICE?

A. I'M DECIDING WHETHER OR NOT TO DO THAT.

Q. AS PART OF YOUR TRAINING, HAVE YOU BEEN TRAINED IN EPIDEMIOLOGY?

A. DURING MY RESIDENCY, A LOT OF THE STUDY THAT WE DID WAS IN EPIDEMIOLOGY. DURING MY TWO-YEAR FELLOWSHIP, I HAD COURSES AND DIRECT TRAINING IN EPIDEMIOLOGY, BIOSTATISTICS, SOMETHING CALLED DECISION ANALYSIS AND COST EFFECTIVENESS ANALYSIS.

Q. WHERE DO YOU CURRENTLY WORK?

A. I CURRENTLY WORK AT A COMPANY CALLED EXPONENT IN MENLO PARK.

Q. WHAT IS YOUR JOB FUNCTION FOR EXPONENT?

A. I AM ONE OF THE TWO PHYSICIANS AT EXPONENT. I WORK AS PART OF OUR HEALTH GROUP, WHICH IS A GROUP OF ABOUT 20 PEOPLE THAT DOES RESEARCH IN EPIDEMIOLOGY IN A WIDE VARIETY OF AREAS.

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Q. WE HAVE HEARD A LOT ABOUT PUBLICATIONS IN PEER-REVIEW JOURNALS.
HAVE YOU AUTHORED ANY ARTICLES THAT HAVE APPEARED IN PEER-REVIEW JOURNALS?
A. YES.

5224

Q. COULD YOU GIVE US SOME HIGHLIGHTS, SOME OF YOUR ARTICLES?
A. ONE ARTICLE WAS PUBLISHED IN THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION IN 1997. THIS CONCERNED THE STUDY OF THE CARE OF PATIENTS IN THE INTENSIVE CARE UNIT, AND WHAT THE EFFECT OF ECONOMIC INCENTIVES WAS ON THAT CARE.
Q. HAVE YOU PUBLISHED A NUMBER OF OTHER ARTICLES IN PEER-REVIEW JOURNALS?
A. YES.
Q. DO YOU CURRENTLY HAVE ARTICLES THAT HAVE BEEN SUBMITTED FOR PUBLICATION?
A. TWO ARE CURRENTLY IN PRESS, AND ONE IS SUBMITTED AND TENTATIVELY ACCEPTED.
Q. I CALLED YOU HERE TODAY TO GIVE AN OPINION AS TO WHETHER OR NOT ASBESTOS CAUSES CANCER.
DO YOU HAVE AN OPINION?
A. I BELIEVE IT DOES CAUSE CANCER.
Q. IS ASBESTOS A CAUSE OF LUNG CANCER IN NONOCCUPATIONAL SETTINGS?
A. MY OPINION IS THAT IT IS NOT.
Q. WHAT ABOUT ASBESTOS AS A CAUSE OF CANCER IN BACKGROUND EXPOSURES TO ASBESTOS?
A. AS YOU MAY ALL KNOW, WE'RE EXPOSED TO ASBESTOS ON AN EVERYDAY BASIS AT LOW LEVELS. AT THOSE LOW LEVELS, THERE

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IS NO EVIDENCE THAT IT CAUSES LUNG CANCER.

Q. HOW ABOUT EXPOSURE TO ASBESTOS TO FAMILY MEMBERS OF WORKERS WHO WORK AROUND ASBESTOS; DO YOU HAVE AN OPINION AS TO WHETHER OR NOT THAT INCREASES THE RISK OF LUNG CANCER

5225

IN THE FAMILY MEMBERS?

A. MY OPINION IS THAT IT DOES NOT INCREASE THE RISK OF LUNG CANCER IN FAMILY MEMBERS.

Q. COULD YOU TELL US WHAT THE BASIS OF YOUR OPINION AS FAR AS ASBESTOS AS A CAUSE OF CANCER IS.

A. THERE IS A VERY LARGE LITERATURE --

MR. BROWN: OBJECTION. IT'S GOING TO CALL FOR HEARSAY, ABOUT TO BE HEARSAY.

THE COURT: OKAY. MR. ROSSE IS NOT ASKING YOU WHAT IS SAID IN THE LITERATURE.

WHAT YOU ARE ALLOWED TO DO IS GIVE US YOUR OPINION. AND YOU CAN TELL US THE GENERAL NATURE OF ANY LITERATURE OR ANYTHING ELSE THAT YOU RELY ON.

BUT WHAT YOU CAN'T DO, EXCEPT UNDER SOME CIRCUMSTANCES, WHICH HAVEN'T ARISEN YET, IS TO TELL US THE CONTENT OF THE SPECIFIC RESULTS REACHED IN THE LITERATURE.

I THINK MR. BROWN WAS ANTICIPATING THAT THAT'S WHERE YOU MIGHT BE GOING. AND I DON'T KNOW WHETHER IT WAS OR NOT.

BUT CAN YOU ANSWER THE QUESTION WITHOUT RUNNING AFOUL OF THAT PROSCRIPTION.

MR. ROSSE: Q. DO YOU UNDERSTAND WHAT I'M SAYING?

A. I THINK SO.

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THE COURT: ARE YOU ABLE TO ANSWER THE QUESTION IF HE ASKS IT AGAIN?
MR. ROSSE: HOW ABOUT IF I FRAME THE QUESTION A LITTLE DIFFERENTLY?

5226

THE COURT: OKAY. THAT'S FAIR.
MR. ROSSE: Q. HAVE YOU REVIEWED EPIDEMIOLOGICAL LITERATURE REGARDING EXPOSURE TO ASBESTOS AND THE RISK OF DISEASE FROM THAT EXPOSURE?
A. YES, I HAVE.
Q. IS THAT, IN PART, THE BASIS OF YOUR OPINION ON WHETHER OR NOT ASBESTOS CAUSES AN INCREASED RISK OF DEVELOPING LUNG CANCER?

A. YES, IT IS.
Q. IS PART OF THE BASIS YOUR MEDICAL TRAINING AS A DOCTOR?
A. YES.
Q. PART OF YOUR BASIS FOR RENDERING OPINIONS IN THIS CASE?
A. YES.
Q. WE HAVE HEARD A LOT ABOUT EPIDEMIOLOGY ALREADY, SO I'M GOING TO TRY TO CUT THROUGH THAT. WHAT I THINK WE HEARD IS THE CRITERIA FOR CAUSAL INFERENCE.
CAN YOU SEE THIS CHART? I'LL PULL IT OUT A LITTLE BIT.
A. MOSTLY.
Q. YOU HAVE SEVERAL FACTORS UP THERE: "CHANCE, BIAS CONSISTENCY OF FINDINGS."
ARE THESE THE CRITERIA THAT EPIDEMIOLOGISTS LOOK

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FOR IN DETERMINING WHETHER OR NOT SOMETHING IS A CAUSE OF A DISEASE OR SOME OTHER REACTION?

A. YES, THEY ARE.

Q. ARE THESE THE FACTORS THAT YOU LOOK FOR AS AN

EPIDEMIOLOGIST?

A. YES, THEY ARE.

Q. WOULD YOU AGREE THAT THESE ARE THE PROPER CRITERIA THAT AN EPIDEMIOLOGIST SHOULD USE?

A. THESE ARE CRITERIA THAT AN EPIDEMIOLOGIST SHOULD USE. I AGREE.

Q. WHICH OF THESE FACTORS WOULD DEAL WITH THE SIZE OF THE STUDY? BY "SIZE," I MEAN THE NUMBER OF PEOPLE IN A PARTICULAR GROUP THAT'S BEING STUDIED.

A. THE PRIMARY ONE WOULD BE "CHANCE."

Q. WHICH OF THESE FACTORS WOULD DEAL WITH THE LEVEL OF EXPOSURE TO THE SUBSTANCE BEING STUDIED?

A. THE ONE YOU ARE REFERRING TO AS NO. 5, "DOSE/RESPONSE RELATIONSHIP."

Q. IS ASBESTOS, AND ASBESTOS AS A CAUSE OF LUNG CANCER SPECIFICALLY, A DOSE/RESPONSE REACTION?

A. THAT'S GENERALLY THOUGHT TO BE THE CASE.

Q. COULD YOU BRIEFLY EXPLAIN WHAT YOU MEAN BY "DOSE/RESPONSE."

A. "DOSE/RESPONSE" IS SIMPLY THAT THOSE PEOPLE WHO ARE EXPOSED TO THE LARGER AMOUNTS ARE MORE LIKELY TO DEVELOP A DISEASE OR A CONDITION.

Q. WE HAVE HEARD THAT THERE ARE NUMEROUS IDENTIFIED CARCINOGENS IN HUMANS.

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WOULD YOU AGREE WITH THAT?
A. CERTAINLY.
Q. NOW, WE HAVE HEARD THERE IS ARSENIC, DIESEL FUMES AND RADON.

5228

ARE THESE SOMETHING THAT WE ARE EXPOSED IN EVERYDAY LIFE?
A. YES. ALL OF US ARE EXPOSED TO THESE CHEMICALS IN SMALL AMOUNTS IN EVERYDAY LIFE.
Q. IS THE REASON THAT WE DON'T SEE A HUGE EPIDEMIC OF LUNG CANCER FROM THIS EXPOSURE, DOES THAT HAVE TO DO WITH DOSE?
MR. BROWN: VAGUE, FIRST AS TO "THIS EXPOSURE." YOU ARE TALKING ABOUT --
MR. ROSSE: I MEAN, TO THE EVERYDAY EXPOSURES. I SAID TO THE EVERYDAY EXPOSURES.
MR. BROWN: WITHDRAWN.
THE COURT: OKAY.
THE WITNESS: I WOULD AGREE, GENERALLY, WHEN THE DOSES ARE LOW, WE DON'T SEE AN INCREASE IN RISK.
MR. ROSSE: Q. IS THE DOSE/RESPONSE OR THE LEVEL OF EXPOSURE SOMETHING THAT EPIDEMIOLOGISTS STUDY?
A. YES, IT IS.
Q. WHY IS IT THAT THEY LOOK FOR A DOSE/RESPONSE IN AN IDENTIFIED CARCINOGEN ONCE IT'S BEEN IDENTIFIED?
A. MOSTLY, THERE ARE TWO REASONS. ONE IS AN ATTEMPT TO VERIFY THAT IN FACT THERE IS A DOSE/RESPONSE RELATIONSHIP.
AND THE OTHER IS TO ESTIMATE THE IMPORTANCE OF DOSES THAT PEOPLE MAY BE RESPONDING TO ON A PUBLIC HEALTH

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BASIS.
Q. NOW, WITH REGARD TO ASBESTOS AS A CAUSE OF LUNG CANCER, WHERE WAS THAT FIRST IDENTIFIED? AND BY "WHERE," I

5229
MEAN, IN WHAT GROUP OF PEOPLE WAS ASBESTOS AS A CAUSE OF LUNG CANCER FIRST IDENTIFIED?
A. IT WAS FIRST IDENTIFIED IN PEOPLE WHO WERE OCCUPATIONALLY EXPOSED TO ASBESTOS, MOSTLY MILLERS AND

MINERS.
Q. WAS IT IDENTIFIED IN INSULATORS, FACTORY WORKERS?
A. YES.
Q. WAS THAT FAIRLY EARLY ON?
A. YES. THIS WAS ON THE ORDER OF 30, 40 YEARS AGO.
Q. NOW, IN THE LAST 30 OR 40 YEARS, HAVE THERE BEEN HUNDREDS, IF NOT THOUSANDS OF ARTICLES THAT HAVE RESEARCHED THE EFFECTS OF ASBESTOS ON HUMANS?
A. YES.
Q. HEALTH HAZARDS?
A. YES, THERE HAVE.
Q. THIS HAS BEEN AN EXTENSIVELY STUDIED MATERIAL?
A. INDEED.
Q. THERE HAVE BEEN NUMEROUS STUDIES ON THE EFFECTS OF ASBESTOS ON DIFFERENT TRADES; IS THAT CORRECT?
A. THAT'S RIGHT.
Q. THERE HAVE BEEN STUDIES ON INSULATORS?
A. YES.
Q. STUDIES ON PIPEFITTERS AND PLUMBERS?
A. YES.
Q. STUDIES ON ASBESTOS PRODUCT MANUFACTURERS?

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A. YES.
Q. STUDIES ON MINERS?
A. YES.

5230

Q. HAVE YOU REVIEWED THE LITERATURE WITH REGARD TO THESE STUDIES?
A. THE LITERATURE IS HUGE, BUT I HAVE REVIEWED MANY ARTICLES.
Q. THE JURY HAS HEARD ABOUT STANDARD MORTALITY RATIOS AND RELATIVE RISK.
ARE THESE TWO TERMS CLOSELY RELATED?
A. YES, THEY ARE.
Q. COULD YOU GIVE A BRIEF EXPLANATION ON WHAT STANDARD MORTALITY OR RELATIVE RISK IS.
A. SURE. RELATIVE RISK IS A MEASURE OF THE RELATIVE DEGREE OF INCREASING RISK FOR A PARTICULAR OUTCOME DUE TO A PARTICULAR EXPOSURE.
THERE ARE MANY DIFFERENT WAYS OF RELATIVE RISK. ONE OF THEM IS THE STANDARDIZED MORTALITY RATIO. THE SMR IS ESSENTIALLY A MEASURE. IT’S A QUOTIENT. IT’S THE NUMBER OF OBSERVED DEATHS OR OCCURRENCES DIVIDED BY THE EXPECTED NUMBER IF THE PERSON HAD NOT BEEN EXPOSED.
SO THE SMR IS ONE WAY OF ESTIMATING A RELATIVE RISK.
Q. BASED ON YOUR REVIEW OF THE LITERATURE REGARDING PARTICULAR TRADES, I’D LIKE TO GIVE YOU -- I’D LIKE YOU TO GIVE US AN OPINION ON WHAT THE RELATIVE RISK FOR DIFFERENT TRADES IS.
IT’S OKAY IF WE USE "RELATIVE RISK"?

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A. SURE.
Q. NOW, YOU SAID THAT THERE HAVE BEEN NUMEROUS ARTICLES STUDYING DIFFERENT TRADES.

5231

HAVE ALL OF THESE ARTICLES, FOR EXAMPLE, THAT HAVE LOOKED AT THE INSULATORS, HAVE THEY ALL COME UP WITH THE SAME RELATIVE RISK FOR INSULATORS?
A. NO. THERE IS SEVERAL REASONS WHY DIFFERENT ARTICLES WOULD COME UP WITH DIFFERENT ESTIMATES OF RELATIVE RISK. ONE IS SIMPLY RANDOM VARIATION.
AND THE SECOND, THAT THERE MAY BE DIFFERENT -- THERE MAY BE TRUE DIFFERENCES IN RISK IN DIFFERENT POPULATIONS.
Q. I'D LIKE TO START WITH ASBESTOS PRODUCT MANUFACTURERS. BY THAT, I MEAN THE PEOPLE THAT WORK IN THE MANUFACTURE OF ASBESTOS PRODUCTS.
(WRITING ON BOARD)
HAS THAT GROUP BEEN STUDIED?
A. IT HAS.
Q. WHAT IS THE RANGE OR THE RELATIVE RISK TO WORKERS IN THE MANUFACTURE OF ASBESTOS-CONTAINING PRODUCTS?
MR. BROWN: YOUR HONOR, I'M GOING TO OBJECT. VAGUE UNLESS THE PRODUCT IS IDENTIFIED AND --
THE COURT: I DIDN'T HEAR YOU.
MR. BROWN: I'M JUST GOING TO STAY WITH THE OBJECTION. IT'S VAGUE AS TO WHAT PRODUCT WE ARE TALKING ABOUT. "ASBESTOS PRODUCTS" IS VERY VAGUE.
THE COURT: DO YOU WANT TO BE MORE SPECIFIC IN THE QUESTION.
I DON'T KNOW WHETHER THE ANSWER -- I DON'T KNOW

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WHETHER OR NOT THE ANSWER VARIES WITH THE PRODUCT OR NOT.
IT'S HARD TO RULE ON THIS.

5232

MR. ROSSE: LET ME ASK SOME FOUNDATIONAL QUESTIONS.
THE COURT: ALL RIGHT.
MR. ROSSE: Q. HAVE ASBESTOS PRODUCT MANUFACTURERS BEEN STUDIED AS A GROUP? HAVE THERE BEEN STUDIES SPECIFIC TO PARTICULAR PRODUCTS?
A. I'M SORRY. I COULDN'T HEAR PART OF THE QUESTION. PLEASE REPEAT IT.
Q. WHEN WE TALK ABOUT THE MANUFACTURE OF ASBESTOS-CONTAINING PRODUCTS, HAS THAT GROUP OF WORKERS BEEN STUDIED AS A GROUP GENERALLY, OR HAVE THOSE STUDIES FOCUSED ON A PARTICULAR ASBESTOS-CONTAINING PRODUCT?
A. MOST OF THE STUDIES SIMPLY LOOK AT POPULATIONS OF WORKERS IN PLANTS, AND ONE PLANT, COMPARING FROM ONE PLANT TO ANOTHER. THERE MAY BE DIFFERENT KINDS OF ASBESTOS BEING MANUFACTURED IN DIFFERENT WAYS.
SO MOSTLY, THE STUDIES LOOK AT POPULATIONS AS A WHOLE RATHER THAN INDIVIDUAL PARTICULAR COMPONENTS.
Q. NOW, BASED ON THOSE STUDIES THAT YOU REVIEWED ON THE MANUFACTURE OF ASBESTOS-CONTAINING PRODUCTS, CAN YOU GIVE US A RANGE OR A RELATIVE RISK OF THE DEVELOPMENT OF LUNG CANCER FOR THOSE WORKERS?
A. SURE. AS I SAID BEFORE, TO GIVE -- TO GIVE ONE NUMBER PROBABLY OVERESTIMATES THE PRECISION OF WHICH WE KNOW OF ANY OF THESE FIGURES.
BUT ON AVERAGE, IT'S APPROXIMATELY 1.9, AND A

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RANGE MIGHT BE FROM 1.3 TO SAY 2.5.
AGAIN, THESE FIGURES MEAN THAT A WORKER WORKING

5233

IN AN ASBESTOS PRODUCTS MANUFACTURING PLANT MIGHT HAVE, ON AVERAGE, ABOUT 1.9 TIMES AS HIGH A RISK OF GETTING LUNG CANCER AS A REGULAR PERSON WHO DOES NOT WORK IN THAT INDUSTRY.

Q. AND ONE IS THE NORMAL POPULATION RISK OF CANCER?

A. RIGHT.

Q. WOULD ASBESTOS PRODUCTS INCLUDE ASBESTOS CEMENT FACTORIES IN ITALY?

A. YES.

Q. HOW ABOUT ASBESTOS INSULATION PLANTS IN NEW JERSEY?

A. YES.

Q. WHAT DOES THE LITERATURE SHOW AS TO THE RELATIVE RISK OF LUNG CANCER IN ASBESTOS MINERS?

MR. BROWN: SAME OBJECTION. MINERS IN WHAT KIND OF ASBESTOS? THERE IS A GREAT VARIETY. SO CAN WE HAVE SOME --

THE COURT: YOU CAN GO THROUGH THE SAME SERIES OF QUESTIONS ON THIS, IF YOU WANT.

MR. ROSSE: Q. HAVE THERE BEEN STUDIES ON DIFFERENT MINES AND DIFFERENT TYPES OF ASBESTOS?

A. YES.

Q. HAS THERE BEEN A RANGE OF RELATIVE RISK SHOWN WITHIN THOSE STUDIES?

A. I BELIEVE SO.

Q. WHAT IS THE RANGE OF RELATIVE RISK FOR ASBESTOS

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MINERS AS SHOWN IN THE STUDIES?
A. IT'S SOMEWHAT LOWER THAN THOSE PEOPLE WHO ARE

5234

INVOLVED IN ASBESTOS PRODUCTS MANUFACTURING.
I WOULD ESTIMATE THAT THE RELATIVE RISK, ON AVERAGE, IS AROUND 1.4. IT MIGHT VARY FROM 1.2 TO 1.8.
Q. HAVE THERE BEEN STUDIES ON -- STRIKE THAT.
WOULD THAT INCLUDE MINES IN CANADA?
A. YES.
Q. HAVE THERE BEEN STUDIES ON PIPEFITTERS AND PLUMBERS?
A. THERE HAVE BEEN. MOSTLY, PIPEFITTERS AND PLUMBERS ARE INCLUDED IN STUDIES THAT LOOK AT -- LOOK AT PEOPLE WITH A WIDE RANGE OF OCCUPATIONS.
Q. AND WHAT STUDIES HAVE THOSE BEEN? WHAT HAVE THEY BEEN LOOKING AT, WHAT GROUP OF WORKERS?
A. FOR EXAMPLE, SHIPYARD WORKERS.
Q. HAVE THERE BEEN SEVERAL OF THOSE STUDIES?
A. YES.
Q. WHAT IS THE RANGE FOR THE RELATIVE RISK FOR CANCER IN THOSE STUDIES?
A. I WOULD SAY THE AVERAGE IS APPROXIMATELY 1.2, AND THE RANGE MIGHT GO FROM 1.1 TO SAY 1.6.
Q. WOULD IT BE YOUR OPINION THAT PIPEFITTERS AND PLUMBERS WOULD GENERALLY FALL WITHIN THAT RANGE?
A. YES.
Q. HAVE THERE BEEN STUDIES ON INSULATORS USING ASBESTOS-CONTAINING INSULATION?
A. YES, THERE HAVE BEEN.

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Q. WHAT IS THE RANGE FOR THE RELATIVE RISK OF CANCER FOR INSULATORS?

5235

A. INSULATORS GENERALLY HAVE HIGHER LEVELS OF EXPOSURE. SO AS YOU MIGHT GUESS, THEIR RELATIVE RISKS FOR GETTING LUNG CANCER ARE HIGHER.

I WOULD SAY APPROXIMATELY 4, AND THE RANGE MIGHT GO FROM SAY 2 TO 5.

AGAIN, YOU HAVE TO UNDERSTAND, THESE ARE ROUGH ESTIMATES.

Q. THERE HAS BEEN A FAIRLY WIDE RANGE FOR FINDINGS OF RELATIVE RISK IN THE STUDY OF INSULATORS?

A. THERE HAVE BEEN A SMALL NUMBER OF STUDIES. THAT'S WHY THE RANGE I WOULD GIVE WOULD BE FAIRLY WIDE, BECAUSE THERE'S NOT A LOT OF CERTAINTY.

Q. HAVE THERE BEEN STUDIES INTO THE RELATIVE RISK OF LUNG CANCER FOR NONOCCUPATIONALLY EXPOSED GROUPS?

A. THERE HAVE BEEN A FEW STUDIES.

Q. WE'LL GET TO THE RISK OF THAT IN JUST A SECOND. I WANT TO FIRST BRING OUT: FROM AN EPIDEMIOLOGY, STANDPOINT: WHAT DOES "NONOCCUPATIONAL EXPOSURE" MEAN?

A. "NONOCCUPATIONAL EXPOSURE" SIMPLY MEANS EXPOSURE TO AN AGENT, BUT NOT IN A SETTING OF A USUAL OCCUPATION.

Q. WHAT ABOUT -- WE HEARD "BYSTANDER EXPOSURE."

WOULD THAT BE NONOCCUPATIONAL? WOULD THAT BE OCCUPATIONAL?

A. I WOULD SAY BYSTANDER EXPOSURE COULD BE EITHER ONE.

Q. IF A PIPEFITTER IS WORKING IN AN INDUSTRIAL SETTING, HE'S WORKING NEAR INSULATORS, WOULD THAT BE

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NONOCCUPATIONAL OR WOULD THAT BE BYSTANDER?

5236

A. I WOULD CALL THAT BYSTANDER OCCUPATIONAL EXPOSURE.

Q. IT WOULD FALL UNDER THE OCCUPATIONAL EXPOSURE RANGE FOR PIPEFITTERS AND WE HAD THAT WITHIN THE SHIPYARD?

A. THAT'S CORRECT.

Q. WHAT ARE THE TYPES OF EXPOSURE IN A NONOCCUPATIONAL SETTING?

A. THERE ARE GENERALLY TWO TYPES OF NONOCCUPATIONAL EXPOSURE.

ONE IS IF YOU'RE RELATED TO OR IF YOU LIVE WITH A PERSON WHO WORKS OCCUPATIONALLY, THAT PERSON MAY BRING HOME SOME OF THE MATERIAL ON HIS OR HER CLOTHES.

THE OTHER IS IF YOU LIVE CLOSE TO A PLANT, OR A PLACE WHERE EXPOSURE HAPPENS, YOU COULD GET NONOCCUPATIONAL EXPOSURE THROUGH THE AIR, JUST BY BEING CLOSE TO THAT PLANT.

Q. IF YOU LIVE NEAR AN ASBESTOS MINE, WHERE THE DEBRIS FROM THE MINE IS PILED AND THE WIND BLOWS, IN THAT AREA COULD YOU BE NONOCCUPATIONALLY EXPOSED TO ASBESTOS?

A. YES. THAT'S A GOOD EXAMPLE.

Q. COULD THAT RESULT IN A FAIRLY SIGNIFICANT NONOCCUPATIONAL EXPOSURE?

A. IT CERTAINLY COULD.

Q. ARE THERE DIFFERENT FACTORS THAT YOU LOOK AT WHEN YOU LOOK AT NONOCCUPATIONALLY EXPOSED PEOPLE?

A. SURE. THERE ARE MANY FACTORS THAT YOU LOOK AT.

FOR EXAMPLE, HOW LONG WERE YOU WITH THE PERSON WHO WAS OCCUPATIONALLY EXPOSED? HOW OFTEN DID THAT PERSON

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BRING HOME THE MATERIAL ON HIS OR HER PERSON; FOR EXAMPLE,

5237

ON THE CLOTHES?

IF YOU ARE TALKING ABOUT LIVING CLOSE TO A PLANT, YOU'D CLEARLY BE EXPOSED TO MORE IF YOU LIVED RIGHT NEXT DOOR TO THE PLANT AS OPPOSED TO 30 MILES AWAY.

Q. WHAT ABOUT, WOULD IT VARY IF THE PERSON DID DO THE LAUNDRY OR DIDN'T DO THE LAUNDRY OF THE WORKER?

A. YES.

Q. WHAT ABOUT THE VARIANCE IN WHAT THE WORKER HIMSELF DID; WOULD THAT AFFECT THE EXPOSURE IN THE NONOCCUPATIONALLY EXPOSED GROUP?

A. I THINK IT DEFINITELY WOULD.

Q. WOULD, SAY, THE FAMILY OF AN INSULATOR POTENTIALLY HAVE GREATER EXPOSURE THAN THE FAMILY OF A SHIPYARD WORKER?

A. I BELIEVE SO.

Q. IS THAT BECAUSE THE WORKER HIMSELF HAS MORE EXPOSURE AND THEREFORE WOULD LIKELY BRING HOME MORE FIBERS?

A. THAT'S CORRECT.

Q. WHAT ABOUT THE TIME FRAME OF THE STUDY; WOULD THAT HAVE ANY INFLUENCE ON THE LEVEL OF EXPOSURE?

A. THE LEVEL OF NONOCCUPATIONAL EXPOSURE?

MR. BROWN: I DIDN'T HEAR RIGHT. YOU SAID "TIME"?

MR. ROSSE: TIME FRAME, THE ERA IN WHICH THE STUDY WAS DONE.

MR. BROWN: THE YEAR? OKAY.

THE WITNESS: I THINK I UNDERSTAND WHAT YOU ARE

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GETTING AT. HISTORICALLY, ASBESTOS EXPOSURES IN THE

OCCUPATIONAL SETTING WERE MUCH HIGHER IN THE ’50S AND ’60S AND LOWER IN THE ’70S AND ’80S, MOSTLY DUE TO GOVERNMENTAL REGULATION.

MR. ROSSE: Q. WERE EXPOSURES MUCH MORE HEAVY OR MUCH GREATER DURING THE WORLD WAR II ERA?

A. YES, I BELIEVE SO.

Q. THEY HAVE SUBSEQUENTLY BEEN REDUCED OVER THE YEARS SINCE THAT PERIOD?

A. THAT’S RIGHT.

Q. IS THAT IN PART DUE TO THE AWARENESS THAT ASBESTOS WAS A HAZARD AND AN ATTEMPT TO REDUCE THE EXPOSURE?

MR. BROWN: I’M GOING TO OBJECT AS FOUNDATIONAL. ALSO VAGUENESS. I MEAN, THAT’S A 60-YEAR PERIOD.

THE COURT: THE QUESTION ON THE SCREEN IS ILLEGIBLE. WOULD YOU READ IT BACK.

MR. BROWN: YOUR HONOR, MAYBE IN THE INTEREST OF TIME, I CAN JUST REPHRASE.

THE COURT: WHY DON’T YOU REPHRASE IT.

MR. ROSSE: Q. I LOST MY THOUGHT.

DO THE STUDIES OR THE LITERATURE DISCUSS ATTEMPTS TO REDUCE EXPOSURE TO WORKERS?

A. GENERALLY, THEY DO, YES.

Q. THERE HAVE BEEN ATTEMPTS TO REDUCE EXPOSURES TO WORKERS SINCE WORLD WAR II THROUGH TODAY?

MR. BROWN: VAGUE AS TO TIME. THAT’S A LONG PERIOD.

THE COURT: YOU MEAN AT ANY TIME SINCE WORLD WAR

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II?

MR. ROSSE: AT ANY TIME.

THE COURT: YOU CAN GO AHEAD AND ANSWER.

THE WITNESS: I BELIEVE THE ANSWER WOULD GENERALLY BE YES.

MR. ROSSE: Q. INCLUDED IN THAT IS DISCONTINUING THE USE OF ASBESTOS IN CERTAIN PRODUCTS?

A. INDEED.

Q. AND INCLUDED IN THAT IS REDUCING THE AMOUNT OF ASBESTOS IN CERTAIN PRODUCTS?

A. YES.

Q. AND PERHAPS HAVING THE WORKERS WEAR MASKS?

A. YES.

Q. OR USE WET-DOWN PROCEDURES WHEN THEY REMOVE ASBESTOS?

A. SURE.

Q. NOW, WITHIN THE POPULATION GROUP STUDIES, HOW DO YOU STUDY A NONOCCUPATIONAL GROUP? IS THERE SOME WAY YOU FIND THESE PEOPLE AS A GROUP?

A. I GUESS CONSIDERING THE TWO DIFFERENT TYPES OF NONOCCUPATIONAL EXPOSURE, THERE ARE TWO DIFFERENT WAYS OF STUDYING SUCH EXPOSURES.

ONE COULD STUDY THE WIVES OF WORKERS WHO ARE EXPOSED TO ASBESTOS OR THE FAMILIES OF WORKERS WHO ARE EXPOSED TO ASBESTOS.

ULTIMATELY, ONE COULD STUDY PEOPLE WHO DO NOT WORK IN PLANTS OR IN MINES BUT WHO LIVE CLOSE TO THEM.

Q. IF YOU WERE TO USE THE WIVES OF WORKERS, IS THAT

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A REASONABLY GOOD STUDY METHOD, BECAUSE TYPICALLY THE WIVES WOULD NOT WORK IN ASBESTOS SETTINGS?

A. TYPICALLY, THE WIVES DID NOT WORK.

THERE'S THE POSSIBILITY THAT SOME WIVES MAY HAVE WORKED IN SOME OF THOSE SETTINGS, BUT IN GENERAL, THEY DID NOT.

Q. SO IF YOU STUDIED ALL WIVES GENERALLY, THERE WOULD BE A SMALL PERCENTAGE OF THOSE WIVES WHO MAY HAVE WORKED IN JOBS WHERE THEY WERE EXPOSED TO ASBESTOS?

A. THAT'S CORRECT.

Q. AND WHAT EFFECT WOULD THAT HAVE ON THE STUDY ITSELF?

A. THAT WOULD TEND TO INFLATE THE OBSERVED RISK OF NONOCCUPATIONAL EXPOSURE.

Q. NOW, TO STEP BACK FOR A SECOND.

WHEN YOU STUDY THE WORKERS AND YOU STUDY PIPEFITTERS, DO YOU INCLUDE ALL PIPEFITTERS, INCLUDING FOREMEN AND SUPERVISORS AND MANAGERS?

A. GENERALLY, WHEN A STUDY LIKE THIS IS DONE, EVERYONE WHO WORKS AT THE PLANT IS INCLUDED.

THERE MAY BE PEOPLE WHO ARE EXPOSED TO MORE AND PEOPLE WHO ARE EXPOSED TO LESS, BUT GENERALLY, EVERYONE IS INCLUDED.

Q. WOULD IT BE A FAIR STATEMENT THAT A UNION BUSINESS AGENT FOR THE PIPEFITTERS MIGHT HAVE LESS EXPOSURE THAN THE PIPEFITTERS THEMSELVES?

A. I BELIEVE SO.

Q. WOULD THAT BE BECAUSE THEY'RE NOT DOING HANDS-ON

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WORK?
A. THAT'S RIGHT.
Q. AND THEY ARE IN THE OFFICE PART OF THE DAY, BUT THEY ARE ON THE JOB FULL TIME?
A. THAT'S RIGHT.
Q. WOULD IT BE FAIR THAT RESIDENTIAL PIPEFITTERS WOULD HAVE TYPICALLY LESS EXPOSURE THAN A PIPEFITTER IN AN INDUSTRIAL SETTING?
A. GENERALLY, THE PIPES BEING WORKED ON ARE SMALLER, THERE'S LESS MATERIAL, LESS ASBESTOS MATERIAL THAT YOU'RE WORKING WITH. SO GENERALLY, YOU WOULD HAVE SMALLER EXPOSURES.
Q. WOULD IT BE FAIR TO SAY THAT A FOREMAN FOR THE PIPEFITTERS WOULD TYPICALLY HAVE LESS EXPOSURE THAN THE JOURNEYMAN PIPEFITTERS THAT ARE DOING THE HANDS-ON WORK?
MR. BROWN: OBJECTION. FOUNDATION AND VAGUE.
THE COURT: SUSTAINED.
MR. ROSSE: Q. WOULD THE FACTOR THAT WE TALKED ABOUT, THAT BEING THE POSSIBILITY OF A UNION AGENT BEING INCLUDED IN A STUDY, THE POSSIBILITY OF RESIDENTIAL PIPEFITTERS BEING INCLUDED IN A STUDY OF PIPEFITTERS, WOULD THOSE AFFECT THE LEVELS OF EXPOSURE AS THE GROUP AS A WHOLE?
A. THOSE WOULD BE PART OF THE EXPOSURE OF THE GROUP AS A WHOLE.
Q. IF YOU INCLUDED UNION PIPEFITTERS AND -- EXCUSE ME -- UNION BUSINESS AGENTS AND RESIDENTIAL PIPEFITTERS AND FOREMEN PIPEFITTERS IN A STUDY OF NONOCCUPATIONALLY EXPOSED PEOPLE, WOULD THAT HAVE SOME INFLUENCE ON THE STUDY?

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A. SURE. I GUESS I WOULD CALL THAT -- I WOULD CALL THAT CONTAMINATION. YOU ARE ATTEMPTING TO DO A STUDY ON THOSE WHO ARE EXPOSED NONOCCUPATIONALLY, BUT SOME OF THE MEMBERS OF YOUR GROUP WERE EXPOSED OCCUPATIONALLY.

Q. DO ALL OF THESE FACTORS GO TO THE DOSE/RESPONSE RELATIONSHIP?

A. CERTAINLY.

Q. DOCTOR, BASED ON YOUR REVIEW OF THE LITERATURE AND YOUR MEDICAL TRAINING AND BACKGROUND, IS IT YOUR OPINION TO A REASONABLE DEGREE OF MEDICAL PROBABILITY THAT NONOCCUPATIONAL EXPOSURE TO ASBESTOS DOES NOT INCREASE THE RISK OF LUNG CANCER?

A. YES. THAT'S WHAT I BELIEVE.

Q. THAT WOULD INCLUDE PERSONS LIVING IN THE HOUSEHOLDS OF MINERS?

A. YES.

Q. THAT WOULD INCLUDE THE PERSONS LIVING IN THE HOUSEHOLDS OF INSULATORS?

A. YES.

Q. THAT WOULD INCLUDE PERSONS LIVING IN THE HOUSEHOLDS OF PIPEFITTERS?

A. YES.

Q. AND THAT WOULD INCLUDE PIPEFITTERS, EVEN IF THEY WORKED IN A STEAM PLANT VERSUS IN A RESIDENTIAL HOME?

A. YES, I BELIEVE SO.

Q. WHAT WOULD THE EFFECT ON YOUR OPINION OF EXPOSURE BE TO A PIPEFITTER WHO WORKS IN A STEAM PLANT WHERE PRIMARILY NONASBESTOS-CONTAINING INSULATION IS USED VERSUS A

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STEAM PLANT, WHERE ALL ASBESTOS INSULATION IS USED?

MR. BROWN: OBJECTION. HYPOTHETICAL. DOESN'T FIT THE EVIDENCE.

THE COURT: WELL, I'M GOING TO OVERRULE THAT.

I THINK I ACTUALLY EXPLAINED TO THE JURY ALREADY ONCE, AND I WILL AGAIN IN MY CLOSING ARGUMENTS, HOW TO HANDLE HYPOTHETICAL TYPE OF QUESTIONS AND HOW TO RELATE THEM TO THE CASE.

IN ANY EVENT, I'M GOING TO OVERRULE THE OBJECTION.

THE WITNESS: GENERALLY, I WOULD AGREE WITH YOUR STATEMENT. IF THERE IS LESS ASBESTOS AROUND, THEN THERE IS ALMOST CERTAINLY LESS EXPOSURE TO ASBESTOS.

MR. ROSSE: Q. LAST TOPIC, DOCTOR.

WE HEARD A LITTLE BIT ABOUT SYNERGY. HAVE YOU LOOKED AT SYNERGY IN YOUR REVIEW OF THE LITERATURE?

A. YES, I HAVE.

Q. AND COULD YOU EXPLAIN REAL BRIEFLY: WHAT IS SYNERGY?

A. SYNERGY IS THE OCCURRENCE OF AN EFFECT THAT'S MORE THAN YOU EXPECT.

FOR EXAMPLE, IF AGENT A CAUSES A DISEASE AND AGENT B CAUSES THE SAME DISEASE, THEN EXPOSURE TO A AND B MIGHT CAUSE MORE DISEASE THAN YOU WOULD EXPECT FROM THE TWO ALONE.

Q. IF WE HAVE A KNOWN RISK OF LUNG CANCER OR EXPOSURE TO A KNOWN CARCINOGEN AT A LEVEL WHERE IT IS KNOWN TO INCREASE THE RISK OF LUNG CANCER, AND WE HAVE ANOTHER

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CARCINOGEN THAT IS AT A LEVEL WHERE IT'S NOT KNOWN TO CAUSE LUNG CANCER, COULD THOSE TWO ACT SYNERGISTICALLY?

A. IN THEORY, THEY COULD. BUT IT WOULD BE EXTREMELY HARD TO DEMONSTRATE THAT. SO FOR ALL PRACTICAL PURPOSES, THE ANSWER IS NO.

Q. HAVE THERE BEEN ANY STUDIES AT ALL IN YOUR REVIEW OF THE LITERATURE WHICH HAVE DEMONSTRATED SUCH A SYNERGISTIC REACTION?

A. NOT THAT I'M AWARE OF.

MR. ROSSE: THANK YOU, DOCTOR.

THE COURT: MR. BROWN.

CROSS-EXAMINATION

BY MR. BROWN: Q. GOOD AFTERNOON, DOCTOR.

A. GOOD AFTERNOON.

Q. THE LAST QUESTION, I DIDN'T FOLLOW. MAYBE I DIDN'T HEAR THE QUESTION RIGHT.

I THINK YOU WERE ASKED: WERE THERE ANY STUDIES THAT DEAL WITH SYNERGY BETWEEN SOMETHING? WOULD YOU FILL IN THE "SOMETHING" FOR ME.

A. THE QUESTION WAS JUST -- WAS JUST GENERAL, IF I WAS AWARE OF ANY STUDIES THAT LOOKED AT SYNERGISTIC INTERACTIONS, WHERE ONE OF THE AGENTS ITSELF WAS NOT SHOWN TO CAUSE CANCER OR TO CAUSE AN EFFECT.

Q. DO YOU UNDERSTAND THE QUESTION TO MEAN THAT YOU WERE BEING ASKED IF THERE WERE -- IF STUDIES SHOW THERE WAS SYNERGY BETWEEN A KNOWN CARCINOGEN AND A SUBSTANCE THAT WAS NOT A CARCINOGEN?

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5245

A. NO.
Q. THEN I DIDN'T UNDERSTAND YOUR ANSWER. COULD YOU -- I DIDN'T UNDERSTAND THE QUESTION OR THE ANSWER.
LET ME ASK YOU: YOU ARE NOT SAYING, ARE YOU, THAT ASBESTOS EXPOSURE AND SMOKING TOGETHER DOES NOT CAUSE A SYNERGISTIC EFFECT, ARE YOU?
A. THERE IS SOME EVIDENCE THAT THERE IS AN INTERACTION BETWEEN SMOKING AND ASBESTOS.
Q. ISN'T THERE A LARGE STUDY OF INSULATORS WHO SMOKED BY DR. SELIKOFF THAT DEALT WITH THAT PROBLEM OVER MANY YEARS AND WITH A VERY LARGE SIZE OF A POPULATION?
A. THERE IS SUCH A STUDY.
Q. AND THAT STUDY CONCLUDED THAT THERE WAS A SYNERGISTIC EFFECT BETWEEN ASBESTOS EXPOSURE AND SMOKING?
A. TO ANSWER THAT QUESTION, WE'D HAVE TO GET INTO DEFINITIONS FOR EXACTLY WHAT YOU MEAN BY "SYNERGY," BUT THAT WAS THE GENERAL GIST OF THAT STUDY.
Q. THAT WAS THE GENERAL CONCLUSION; RIGHT?
A. CORRECT.
Q. AND DR. SELIKOFF DID THAT ALONG WITH AN EPIDEMIOLOGIST NAMED PITA?
A. I BELIEVE SO. I DON'T KNOW WHETHER PITA WAS A COAUTHOR ON THAT PAPER.
Q. AND THAT STUDY WE ARE TALKING ABOUT, THAT WAS INSULATORS OF NEW JERSEY; IS THAT CORRECT?
A. THAT'S CORRECT.
Q. IN PART, AT LEAST, I THINK?
A. YES. THERE HAVE BEEN SEVERAL OTHER STUDIES

5246

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ADDRESSING THAT AS WELL.
Q. THERE JUST ISN'T A DOUBT LEFT IN THE MEDICAL LITERATURE THAT EXPOSURE TO ASBESTOS AND EXPOSURE TO -- AND SMOKING CIGARETTES CAUSES A SYNERGISTIC EFFECT, IS THERE?
MR. ESCHER: OBJECTION. VAGUE.
THE COURT: TELL ME BRIEFLY, WITHOUT AN ARGUMENT, IN WHAT RESPECT IS IT VAGUE?
MR. ESCHER: THE TERM "EXPOSURE TO ASBESTOS." IN WHAT POPULATION?
THE COURT: OKAY. I GUESS WHAT HE'S SAYING IS THAT YOU'RE NOT BUILDING INTO THE QUESTION ANYTHING ABOUT THE KIND OR EXTENT OF THE EXPOSURE. THAT'S THE POINT.
I'LL SUSTAIN.
MR. BROWN: ALL RIGHT.
Q. LET ME ADJUST THE QUESTION THEN TO TAKE VAGUENESS OUT.
WE'LL START OFF WITH SUBSTANTIALLY EXPOSED OCCUPATIONAL WORKERS TO ASBESTOS, SUCH AS INSULATORS, SUCH AS PEOPLE WHO WORK AT THE ELBOW OF INSULATORS, WHATEVER TRADE THEY MIGHT BE.
WITH RESPECT TO THOSE KIND OF ASBESTOS WORKERS, WHO ALSO WERE SMOKERS OF ONE PACK A DAY FOR OVER 20 YEARS, THERE JUST ISN'T ANY QUESTION ANYMORE, IS THERE, DOCTOR, THAT IN THOSE TWO -- IN THAT POPULATION GROUP, THERE IS CLEARLY A SYNERGISTIC EFFECT OF ASBESTOS AND SMOKING?
A. AGAIN, TO ANSWER THAT QUESTION, WE'D HAVE TO GO INTO MORE TECHNICAL DEFINITIONS OF WHAT YOU MEAN BY "SYNERGY."

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Q. WELL, I WANT YOU TO ANSWER THE QUESTION.
I'LL TAKE OUT THE GENERAL DISCUSSION. TELL US, IF YOU CAN, YES OR NO. AND THEN EXPLAIN, IF YOU NEED TO.
HAS THE MEDICAL LITERATURE CLEARLY ESTABLISHED IN THOSE GROUPS THAT THERE IS SYNERGY?
A. THE CONCEPTS ARE A LITTLE BIT DIFFICULT. SYNERGY, AS I EXPLAINED BEFORE, IS THE OCCURRENCE OF A RISK FOR A PARTICULAR EVENT THAT'S MORE THAN YOU WOULD EXPECT BASED ON TWO PARTICULAR AGENTS ALONE.
THE QUESTION AS TO WHAT'S MORE THAN YOU EXPECT DEPENDS ON WHAT MODEL YOU MIGHT USE TO ESTIMATE WHAT THE EXPECTED RISK IS WHEN YOU HAVE TWO AGENTS AT THE SAME TIME.
GENERALLY, THE STUDIES SHOW THAT FOR THOSE PEOPLE WHO ARE EXPOSED TO A LOT OF ASBESTOS, SUCH AS INSULATORS, AND WHO SMOKE, HAVING BOTH OF THOSE AT THE SAME TIME WILL INCREASE YOUR RISK FOR LUNG CANCER SUBSTANTIALLY.
THERE ARE OTHER STUDIES THAT HAVE LOOKED AT MORE LOW LEVELS OF EXPOSURE TO ASBESTOS, AND HAVE FOUND THAT THERE IS NOT A GREAT INCREASE IN RISK FOR LUNG CANCER WITH THE TWO BEING TOGETHER.
SO MY ANSWER IS THAT, WHILE THERE MAY BE INTERACTIONS, THOSE INTERACTIONS WILL ALMOST CERTAINLY DEPEND ON THE LEVEL OF EXPOSURE TO ASBESTOS. IF THE LEVEL OF EXPOSURE TO ASBESTOS IS LOW, THEN THERE WILL BE VERY LITTLE INTERACTION.
Q. DID YOU, IN PREPARING YOURSELF TO TESTIFY HERE THROUGH WHATEVER MEANS, WHETHER COUNSEL JUST PROVIDED THE INFORMATION TO YOU OR YOU STUDIED A DEPOSITION -- LET ME

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WITHDRAW THAT.
AS I UNDERSTAND FROM THE DEPOSITION WE TOOK, YOUR INFORMATION THAT YOU BASED YOUR OPINION ON AS TO THE AMOUNT OF ASBESTOS EXPOSURE OF LESLIE WHITELEY CAME FROM ONLY HER DEPOSITION; IS THAT TRUE?
MR. ROSSE: OBJECTION, YOUR HONOR. IT'S BEYOND THE SCOPE OF DIRECT.
I DIDN'T ASK HIM ANYTHING AT ALL ABOUT ANY EXPOSURE BY LESLIE WHITELEY. THAT QUESTION WAS NOT COVERED.
THE COURT: I'M GOING TO SUSTAIN. HE DIDN'T SAY ANYTHING ABOUT LESLIE WHITELEY IN HIS TESTIMONY. HE WASN'T ASKED ANYTHING.
MR. BROWN: YOUR HONOR --
THE COURT: IF YOU THINK I'M WRONG ABOUT THAT, POINT IT OUT TO ME. I THINK --
MR. BROWN: YOUR HONOR, THAT MAKES PEELING AN ONION LOOK LIKE A VERY THICK PIECE OF --
THE COURT: I DON'T WANT TO HAVE AN ARGUMENT IN FRONT OF THE JURY.
MR. BROWN, IF YOU WANT A SIDEBAR, WE CAN TALK ABOUT IT.
MR. BROWN: I DON'T WANT IT TO BE LONG. I WANT TO BE DONE IN 20 MINUTES.
THE COURT: YOU'RE THE ONE ASKING FOR IT. IF YOU DON'T WANT IT, WE DON'T NEED IT.
MR. BROWN: I WANT IT.
THE COURT: OKAY.
(COURT AND COUNSEL CONFER OUTSIDE

5249
THE PRESENCE OF THE JURY)

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MR. BROWN: YOUR HONOR, GIVEN THE QUESTION THAT I'M GOING TO PROCEED WITH, I WILL WITHDRAW THAT QUESTION.
THE COURT: AND PUT ANOTHER ONE INSTEAD.
MR. BROWN: PUT ANOTHER ONE.
THE COURT: OKAY.

MR. BROWN: Q. DOCTOR, IF I UNDERSTAND CORRECTLY, IN TESTIFYING TODAY, YOU HAVE EXPRESSED NO OPINION WHATSOEVER ABOUT THE AMOUNT OF HOUSEHOLD EXPOSURE THAT LESLIE WHITELEY WAS SUBJECT TO FROM 1959 TO 1974?
A. SO FAR, THAT'S CORRECT.
Q. OKAY. YOU MEANT -- INTENDED NOTHING BY YOUR TESTIMONY TO BE BASED UPON ANY REFERENCE OR TO ANY BASIS THAT YOU MAY HAVE HAD TO UNDERSTAND WHAT THAT EXPOSURE WAS?
A. YOU LOST ME THERE. REPEAT IT.
Q. IN OTHER WORDS, YOUR OPINION IS NOT IN ANY RESPECT BASED UPON THE AMOUNT OF EXPOSURE THAT LESLIE WHITELEY HAD IN HER HOUSEHOLD SETTING?
A. MY UNDERSTANDING IN READING THE DEPOSITION IS THAT SHE HAD NONOCCUPATIONAL EXPOSURE.
Q. WELL, WAIT A SECOND.
A. THAT'S WHAT I'M BASING IT ON.
Q. THAT'S NOT THE QUESTION.
ARE YOU NOW SAYING THAT YOUR OPINION IN SOME WAY IS BASED UPON THE AMOUNT OF EXPOSURE LESLIE WHITELEY HAD IN HER HOUSEHOLD SETTING?
MR. ROSSE: OBJECTION. HE HAS GIVEN SEVERAL OPINIONS. IT'S VAGUE.

5250
THE COURT: NO. HE IS SAYING IS THAT AN OPINION

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THAT HE HAS GIVEN THIS JURY. AND HE'S ASKING HIM IF HE'S GIVEN THAT OPINION OR NOT. THAT'S A FAIR QUESTION.
DO YOU UNDERSTAND?
THE WITNESS: I THINK SO.
THE COURT: YOU CAN ANSWER.
THE WITNESS: I THINK THE ANSWER IS NO.
MR. BROWN: Q. SO NOTHING THAT YOU HAVE SAID TODAY ON DIRECT EXAMINATION IN ANY WAY IS BASED UPON WHAT EXPOSURE LESLIE WHITELEY HAD IN HER HOUSEHOLD SITUATION, 1959 THROUGH 1974; IS THAT ACCURATE?
A. I BELIEVE SO.
Q. OKAY. THAT'S FINE.
NOW, WHEN YOU LOOKED -- WHEN YOU DECIDED THAT ASBESTOS WAS NOT THE CAUSE, DID YOU LOOK AT ALL AT THE POSSIBLE CAUSES OF LUNG CANCER IN LESLIE WHITELEY?
MR. ROSSE: OBJECTION, YOUR HONOR. IT'S BEYOND THE SCOPE OF DIRECT.
THE COURT: YES. I THINK I UNDERSTAND IT.

HE IS TELLING YOU THAT HE'S NOT BASING ANY OF HIS OPINIONS ON ANY INFORMATION CONCERNING MRS. LESLIE WHITELEY.
DO YOU WANT ME TO ASK HIM IF THAT'S WHAT HE SAID?
MR. BROWN: LET ME ASK A DIFFERENT QUESTION.
THE COURT: YOU CAN ASK IT. IT SEEMS LIKE, IN YOUR QUESTIONS, YOU'RE INTERJECTING A QUESTION INTO AN AREA THAT I DON'T BELIEVE HE'S EXPRESSED OPINIONS ABOUT.
BUT IF YOU HAVE SOME DOUBT ABOUT THAT, YOU CAN

ASK HIM THAT QUESTION AND SEE.

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MR. BROWN: SURE.
Q. DOCTOR, YOU EXPRESSED THE OPINION THAT ASBESTOS WAS NOT A CAUSE OF LESLIE WHITELEY'S LUNG CANCER; CORRECT?
A. AT WHAT POINT?
Q. AT WHAT POINT IN WHAT?
THE COURT: HE MEANS, HERE ON THE WITNESS STAND. HE'S ASKING WHETHER HERE ON THE WITNESS STAND.
MR. BROWN: YES. HERE. I'M SORRY.
Q. HERE IN TRIAL IN THE LAST HOUR.
A. I DON'T THINK I'VE SAID ANYTHING ABOUT THAT.
MR. BROWN: IF I HEARD THAT RIGHT, I'M GOING TO MOVE TO STRIKE HIS TESTIMONY.
THE COURT: THAT MOTION IS DENIED.
MR. BROWN: Q. LET ME MAKE SURE I HEARD IT RIGHT.
YOU'RE TESTIFYING THAT YOU HAVE NOT EXPRESSED AN OPINION AS TO WHETHER OR NOT ASBESTOS CAUSED LESLIE WHITELEY'S LUNG CANCER?
A. MY OPINION IS THAT SHE HAD NONOCCUPATIONAL EXPOSURE, IF ANY, AND NONOCCUPATIONAL EXPOSURE IS NOT, IN MY OPINION, A CAUSE OF LUNG CANCER.
THE COURT: GIVEN THAT ANSWER, NOW YOU CAN GO INTO THE AREAS THAT YOU WERE STARTING TO GO INTO BEFORE.
MR. BROWN: Q. NOW, WHEN YOU WERE RULING OUT ASBESTOS, DID YOU CONSIDER ALL THE OTHER POSSIBLE CAUSES OF LUNG CANCER FOR LESLIE WHITELEY?
MR. ROSSE: YOUR HONOR, OBJECTION. THIS IS

BEYOND THE SCOPE OF DIRECT.
MR. BROWN: THIS GOES TO HIS CREDIBILITY.

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THE COURT: YOU'RE ASKING -- YOU WANT ME TO STRIKE THE OPINION THAT HE JUST EXPRESSED?
MR. ROSSE: THE LAST QUESTION, YES.
THE COURT: DO YOU WANT ME TO STRIKE THAT OPINION?
MR. ROSSE: YES, YOUR HONOR.
MR. BROWN: I'M SURE HE KNOWS WHAT I'M SAYING.
MR. ROSSE: I KNOW WHAT HE'S SAYING. I DIDN'T ASK ANY QUESTIONS ABOUT THE CAUSE OF LESLIE WHITELEY'S LUNG CANCER. I DIDN'T ASK THAT ON DIRECT.
THE COURT: WHAT HE'S SAYING IS YOU ARE THE FIRST ONE THAT HAS ELICITED THAT OPINION, AND IT GOES BEYOND THE SCOPE OF WHAT HE ASKED ON DIRECT. HE'S ASKING ME TO STRIKE THAT, BECAUSE HE DIDN'T ASK FOR THAT, AND YOU'RE THE ONE THAT BROUGHT IT UP.
AND I AGREE WITH HIM. I'M GOING TO STRIKE IT.
MR. BROWN: I DID NOT BRING IT UP.
THE COURT: IS THAT YOUR POSITION?
MR. ROSSE: YES, YOUR HONOR.
THE COURT: THAT'S THE RULING. IT'S STRICKEN. IT ONLY CAME UP ON YOUR CROSS-EXAMINATION. HE DID NOT EXPRESS THAT OPINION ON DIRECT. HE WASN'T ASKED SPECIFICALLY --
MR. BROWN: I DIDN'T --
THE COURT: DON'T ARGUE WITH ME, OR IF YOU ARE GOING TO ARGUE WITH ME, AT LEAST LET ME FINISH.

5253

I'M TELLING YOU THAT, ON DIRECT, HE DID NOT ELICIT ANY OPINION, NOR DID HE GET ANY OPINION ABOUT THE

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CAUSE OF LESLIE WHITELEY'S LUNG CANCER.
CORRECT, MR. ROSSE?
MR. ROSSE: YES, YOUR HONOR.
THE COURT: THAT'S THE WAY I HEARD THE RECORD AS WELL AND THE WITNESS HAS AFFIRMED THAT.
YOU DID NOT GIVE THAT TESTIMONY ON YOUR EXAMINATION BY MR. ROSSE; RIGHT?
THE WITNESS: THAT'S CORRECT.
THE COURT: SO I'M STRIKING THE OPINION ON THAT SUBJECT THAT YOU ARE ELICITING FOR THE FIRST TIME ON CROSS, BECAUSE IT WAS NOT WITHIN THE SCOPE OF THE DIRECT EXAMINATION.
MR. BROWN: Q. DIDN'T YOU TESTIFY THAT

ASBESTOS WAS NOT THE CAUSE OF LESLIE WHITELEY'S LUNG CANCER?
MR. ROSSE: OBJECTION.
THE COURT: MR. BROWN, YOU'RE ASKING THAT QUESTION: ON MR. ROSSE'S EXAMINATION, DID HE EXPRESS THAT VIEW OR NOT? THAT'S A FAIR QUESTION.
MR. BROWN: I THINK THAT'S WHAT I ASKED.
MR. ROSSE: I HAVE TO OBJECT.
THE COURT: YOU DIDN'T SAY THAT ON MR. ROSSE'S EXAMINATION?
MR. BROWN: LET ME -- LET ME REPHRASE IT.
THE COURT: OKAY.
MR. BROWN: Q. ON THE DIRECT EXAMINATION IN

5254
THIS COURTROOM, WITHIN THE LAST 45 MINUTES, DIDN'T YOU TELL THIS JURY THAT ASBESTOS WAS NOT A CAUSE OF LESLIE WHITELEY'S

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LUNG CANCER?
MR. BARRON: YOUR HONOR, I JUST NEED TO OBJECT, BECAUSE I THINK IT'S BECOMING ARGUMENTATIVE AND HARASSING.
THE COURT: I ASKED THIS WITNESS WHETHER HE GAVE ANY OPINION ON DIRECT EXAMINATION --
MR. BARRON: CUMULATIVE.
THE COURT: -- ABOUT THE CAUSE OF LESLIE WHITELEY'S LUNG CANCER. AND THE DOCTOR SAID NO.
ISN'T THAT WHAT YOU SAID?
THE WITNESS: THAT'S CORRECT.
THE COURT: OKAY. WE HAVE DONE IT.
I'M STRIKING THE OPINION ON THAT SUBJECT THAT YOU ELICITED FOR THE FIRST TIME ON CROSS, BECAUSE IT GOES BEYOND THE SCOPE OF THE DIRECT.
MR. BROWN: YOUR HONOR-- I APOLOGIZE.
THE COURT: HE DID NOT GIVE THAT OPINION ON DIRECT. HE'S MADE THAT CLEAR. HE'S SAID IT TWICE NOW IN ANSWER TO MY QUESTIONS.
MR. BROWN: YOUR HONOR, I APOLOGIZE, BUT WE REALLY NEED A SHORT MEETING.
THE COURT: YOU CAN ALWAYS HAVE A MEETING.
(COURT AND COUNSEL CONFER OUTSIDE
THE PRESENCE OF THE JURY)
THE COURT: I THINK WE WORKED THIS OUT.
WHY DON'T YOU GO AHEAD.
MR. BROWN: OKAY.

5255
Q. ALL RIGHT, DOCTOR. LET'S SEE IF WE CAN DO THIS AND WRAP IT UP. I'M GOING TO GIVE YOU A HYPOTHETICAL QUESTION.

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FIRST, I'M GOING TO ASK YOU TO ASSUME AN INDIVIDUAL WHO HAS SMOKED FOR 25 YEARS-PLUS ONE PACK A DAY, STARTED EARLY, HAS A RELATIVE RISK OF OVER 20 FROM SMOKING. OKAY.

I'M GOING TO ASK YOU TO ASSUME THAT THIS INDIVIDUAL WAS EXPOSED IN HER HOME AT THE AGE OF 13 AT THE TIME SHE STARTED SMOKING. IT WAS THE FIRST PART OF THAT 25 YEARS. OKAY.

I'M GOING TO ASK YOU TO ASSUME THAT IN THAT HOME, ON A DAILY BASIS, OVER FOUR YEARS, FROM 1969 -- I DON'T NEED THE YEARS -- FOUR YEARS, THAT SHE ON A DAILY BASIS WAS EXPOSED IN HER HOME, IN HER FAMILY CAR, TO THE PERSON OF HER FATHER, WHO WAS WORKING AS A PIPEFITTER IN A PLANT, IN A POWER PLANT, AND THAT HE WAS WORKING IN AND AROUND ASBESTOS WORKERS, INSULATORS, AND THAT THEY ARE WORKING IN A SHELL OF A BUILDING WHICH HAD GRILLED FLOORS, EIGHT FLOORS HIGH, AND THAT THE EXPOSURE TO THE ASBESTOS INCLUDED ASBESTOS THAT WAS DRIFTING DOWN THROUGH THE GRILLS ONTO HER FATHER. IT INCLUDED ASBESTOS THAT WAS BEING RIPPED APART BY POWER SAWS -- THIS WAS AN OUTSIDE POWER PLANT. MOST OF THEM ARE -- AND THE ASBESTOS WAS BEING BLOWN UP IN THE AIR AND BLOWN THROUGH THE ENTIRE FACILITY.

I WANT YOU TO ASSUME THAT THE AMOUNT OF DUST WAS SO GREAT THAT, WHEN HE FINISHED WORK EVERY DAY, HE HAD TO WIPE THE DUST OFF THE WINDSHIELD OF THE CAR, WHICH WAS

PARKED QUITE A WAYS AWAY.

NOW, GIVEN THE DETAIL THAT I GAVE YOU, WITH THE EXPOSURE TO THE CARCINOGEN OF SMOKING AND THE RELATIVE RISK OF OVER 20, AND THE ASBESTOS RELATIONSHIP -- WHY ARE YOU

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SMILING, DOCTOR?
A. I'M CURIOUS TO KNOW WHAT THE END OF THE QUESTION IS GOING TO BE.
Q. THE QUESTION MARK HAS TO COME WITHIN ABOUT FOUR MINUTES, BECAUSE I'VE GOT TO GIVE YOU TWO MINUTES TO ANSWER.
MR. BROWN: WOULD YOU READ JUST A LITTLE BIT OF THAT BACK, NOT VERY MUCH, PLEASE.

(RECORD READ)
MR. BROWN: Q. GIVEN THAT DESCRIPTION OF THE FATHER'S EMPLOYMENT, THE DURATION, HER SMOKING HISTORY, AND ESPECIALLY TWO THINGS I WANT TO EMPHASIZE. SHE WAS 13 DURING A PORTION -- THE LAST PORTION OF THIS EXPOSURE AND SHE WAS SMOKING.
NOW, GIVEN THOSE FACTS, THE FIRST QUESTION: DO YOU KNOW OF ANY EPIDEMIOLOGICAL STUDY THAT DEALS WITH HOME EXPOSURE OF A SMOKING-EARLY TEENAGER AND OCCUPATIONAL EXPOSURE THROUGH AN ASBESTOS-WORKER FATHER?
A. YOU MEAN NONOCCUPATIONAL EXPOSURE?
Q. NO. AN EXPOSURE THROUGH A FATHER WHO WAS AN ASBESTOS -- OCCUPATIONAL ASBESTOS WORKER.
A. THAT QUESTION IS EASY TO ANSWER. I KNOW OF NO SUCH STUDY.
Q. OKAY. NEXT QUESTION IS: GIVEN THAT

5257
HYPOTHETICAL, IN THAT SITUATION, WOULD IT BE YOUR OPINION THAT YOU COULD RULE OUT SYNERGY?
A. I BELIEVE THAT HER RISK WOULD BE PRETTY MUCH CLOSE TO 20. THERE WOULD BE NO INTERACTION.

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Q. YOU THINK THAT IF HER RISK WAS 20 FROM THE CIGARETTES, THEN THE CIGARETTE SMOKING WOULD BE THE ONLY CAUSE BETWEEN ASBESTOS AND SMOKING FOR THAT LUNG CANCER?
A. GIVEN THAT STORY, YES.
Q. OKAY. I WANT TO ASK YOU IF YOU REVIEWED A -- IN THE MINUTES I HAVE LEFT -- ARE YOU FAMILIAR WITH THE STUDY IN HUMAN PATHOLOGY, 1987, WHICH DEALS IN PART WITH OCCUPATIONAL EXPOSURE -- EXCUSE ME -- WITH HOME EXPOSURE, PARAOCCUPATIONAL, ENTITLED, "CURRENT PATHOGENIC CONCEPTS OF DIFFUSE MALIGNANT MESOTHELIOMA," BY CRAIGHEAD?
A. NO.
Q. ARE YOU FAMILIAR WITH AN ARTICLE ON "THE PATHOLOGY OF HUMAN MALIGNANT MESOTHELIOMA," BY SUZUKI, ONE OF THE EPIDEMIOLOGISTS IN THE SELIKOFF GROUP?
A. NO, I'M NOT.
Q. ALL RIGHT. CAN YOU IDENTIFY FOR ME -- LAST QUESTION -- ANY CURRENT LITERATURE WHICH DEALS WITH THE HOME EXPOSURE UNDER ANY SPECIFIC CIRCUMSTANCES OF A FAMILY MEMBER EXPOSED TO INSULATOR OR PIPEFITTER EXPOSURE IN A POWER PLANT SETTING?
A. SORRY. YOU WILL HAVE TO REPEAT THAT.
Q. I MIGHT NOT BE able TO. WOULD YOU REPEAT THAT FOR ME, PLEASE. WOULD YOU READ THAT BACK.
(RECORD READ)

5258
MR. BROWN: THAT WAS KIND OF CONFUSING.
Q. WHAT I WAS TALKING ABOUT WAS THE EXPOSURE IN THE POWER PLANT TO THE FATHER OR TO A FAMILY MEMBER.
BUT ARE YOU AWARE OF ANY CASE STUDIES, ANY

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EPIDEMIOLOGICAL STUDIES WHICH DEAL WITH A CHILD, A SMOKING CHILD THAT WAS EXPOSED TO HER FATHER'S FIBERS, FIBERS HER FATHER BROUGHT HOME FROM OCCUPATIONAL EXPOSURE IN A POWER PLANT AS A PIPEFITTER OR INSULATOR?

A. I THINK I UNDERSTAND THE QUESTION. THERE ARE NO STUDIES LIKE THAT.

MR. BROWN: OKAY. THAT'S ALL I HAVE.

THE COURT: DOES ANYBODY HAVE ANY FURTHER QUESTIONS OR MAY THE DOCTOR BE EXCUSED?

MR. ROSSE: NO.

MR. FURR: NO QUESTIONS.

THE COURT: MAY THE DOCTOR BE EXCUSED?

MS. CHABER: YES.

MR. BROWN: YES. I AM ENTITLED TO KIND OF A CREDIT HERE.

MR. ROSSE: YES.

MR. ESCHER: YES, YOUR HONOR.

THE COURT: YOU ARE EXCUSED.

(WITNESS EXCUSED)

THE COURT: COUNSEL, LET ME JUST TALK TO YOU FOR ABOUT ONE SECOND ABOUT HOW LONG YOU THINK WE'RE GOING TO BE ON MONDAY. I WANT TO FIGURE OUT WHAT TIME TO HAVE THE JURY IN.

(COURT AND COUNSEL CONFER OUTSIDE

5259

THE PRESENCE OF THE JURY)

THE COURT: JURORS, LET ME TELL YOU WHAT I WOULD LIKE TO DO, JUST TO BE SURE THAT NONE OF YOU FIND THIS TO BE TOO INCONVENIENT.

WE HAVE APPROXIMATELY AN HOUR MORE OF EVIDENCE.

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I NEED TO DO SOME WORK WITH THE LAWYERS. AS I TOLD YOU, I'M GETTING THE JURY INSTRUCTIONS AND THESE QUESTIONS TOGETHER.

WHAT I WOULD REALLY LIKE TO DO IS THIS, AND I'LL TELL YOU WHAT IT IS, AND THEN I WILL TELL YOU WHY I WANT TO DO THIS, AND HOPEFULLY, YOU WILL RECOGNIZE THE BENEFITS OF DOING IT THIS WAY, ALTHOUGH IT MAY BE A LITTLE MORE INCONVENIENT TO YOU.

WHAT I WOULD LIKE TO DO IS TO GET TOGETHER WITH THE LAWYERS EARLY IN THE MORNING ON MONDAY, AND START DOING OUR WORK, AND HAVE YOU THEN COME IN AT 1:30 FOR THE ONE HOUR, BECAUSE I WILL KNOW BY THEN WHETHER OR NOT WE CAN GET ALL OF OUR DUCKS IN A ROW BY THE END OF THE DAY ON MONDAY SUCH THAT WE CAN HAVE YOU IN ON TUESDAY MORNING FOR THE INSTRUCTIONS AND THE CLOSING ARGUMENTS.

IN OTHER WORDS, WE WILL BE FAR ENOUGH ALONG IN THE WORK THAT WE NEED TO DO TOGETHER SO I WILL KNOW WHETHER OR NOT WE CAN COMPLETE THE WORK THAT WE HAVE TO DO BY THE END OF THE DAY ON MONDAY.

IF I HAVE YOU IN FIRST THING IN THE MORNING FOR AN HOUR, WHEN YOU LEAVE, I WON'T BE ABLE TO BE SURE WHETHER WE WILL FINISH OUR WORK IN THE REMAINDER OF THE DAY. IN OTHER WORDS, I WILL HAVE A BETTER BEAD ON THE ANSWER TO THE QUESTION OF HOW LONG IT'S GOING TO TAKE US TO DO OUR WORK IF

5260

I CAN HAVE YOU COME IN AT 1:30, BECAUSE WE WILL HAVE HAD A HALF DAY TO SPEND TOGETHER TO DO OUR WORK, AND WE MAY BE ABLE TO COMPLETE ALL OR SUBSTANTIALLY ALL OF THAT WORK.

ON THE OTHER HAND, WE MAY FIND OUT IT'S GOING TO TAKE LONGER THAN WE ANTICIPATED AND IN THAT EVENT, I WOULD

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PROBABLY HAVE TO HAVE YOU TAKE TUESDAY OFF AS WELL AS THE REMAINDER OF MONDAY AFTERNOON. I'M OPTIMISTIC THAT WE CAN GET OUR WORK DONE, BUT I WOULD FEEL BETTER IF WE MEET AT 1:30, SO THAT I COULD TELL YOU THAT WITH SOME ASSURANCE.

SO LET ME ASK: ARE THERE ANY OF YOU THAT FIND IT VERY DIFFICULT IF I GAVE YOU MONDAY MORNING OFF AND WE MET AT 1:30, WITH THE UNDERSTANDING THAT, FOR SURE, YOU'RE ONLY GOING TO BE HERE FOR AN HOUR OR AN HOUR AND A HALF ON MONDAY FOR SURE, NO MATTER WHAT HAPPENS?

AND THEN I WILL TELL YOU AT THE END OF THAT TIME EITHER THAT YOU WILL COME BACK TUESDAY MORNING OR WEDNESDAY MORNING. BUT I WILL AT LEAST KNOW THE ANSWER TO THAT QUESTION.

IS THERE ANYBODY THAT HAS A BIG PROBLEM WITH DOING THAT? IT WOULD BE A GREAT CONVENIENCE, I THINK, TO THE LAWYERS AND FOR ME.

OKAY. THANK YOU VERY MUCH FOR DOING THAT.

ALL RIGHT. OVER THE WEEKEND -- PLEASE LET ME GET THE WORDS OF THE ADMONITION OUT, BECAUSE I HAVEN'T SAID THEM FOR AWHILE -- DON'T DISCUSS THE CASE WITH ANYONE, DON'T LET ANYONE DISCUSS IT WITH YOU. PLEASE DON'T FORM OR EXPRESS ANY OPINIONS ABOUT THE CASE.

THAT REQUIREMENT BECOMES MORE AND MORE IMPORTANT

AS YOU GET LATER IN A CASE. PLEASE CONTINUE TO FOLLOW THAT IMPORTANT AND CRITICAL REQUIREMENT.

ON MONDAY, AGAIN, WE'LL SEE YOU AT 1:30.

HAVE A GOOD WEEKEND.

(THE PROCEEDINGS ADJOURNED AT 5:05 P.M.)

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